THE

# TRIAL

OF

# SIR HUGH PALLISER,

VICE-ADMIRAL OF THE BLUE SQUADRON,

AT A

# COURT-MARTIAL,

HELD ON BOARD HIS MAJESTY'S SHIP THE SANDWICH, IN PORTSMOUTH HARBOUR, ON MONDAY, APRIL 19*th*, 1779.

BEFORE

*VICE-ADMIRAL DERBY, PRESIDENT;*

FOR

## DISOBEDIENCE OF ORDERS, AND NEGLECT OF DUTY.

TO WHICH IS PREFIXED

*A Glossary of the Technical Terms and Sea Phrases used in the course of the Trial.*

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THE THIRD EDITION.

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LONDON

FOR J. MURRAY, NO. 32, FLEET-STREET; AND C. ETHERINGTON, NO. 25, ST. PAUL'S CHURCHYARD.

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# A GLOSSARY OF SEA TERMS,

NECESSARY FOR

*Explaining the Meaning, as generally underſtood, of the Technical Phraſes made uſe of in this Trial.*

*WEAR.* To wear, is to bring a ſhip into a different tack, i. e. to turn her head to leeward.

*TACK.* To tack about, is to go upon another tack, or to bring the ſhip's head another way.

*TACKS.* Are large ropes, made faſt to the lower corner of the fore and main-ſheets; when the larboard tacks are on board, the left-hand corners of the ſheets are pulled forward, and then the left ſide of the ſhip is to the wind; but when the ſtarboard tacks are on board, the right-hand ſide of the ſhip is to the wind.

*LINE.* A line is the arrangement, or order, in which a fleet of ſhips of war are diſpoſed in to engage an enemy; and that which is beſt calculated is, by drawing up the ſhips in a long file or right line, prolonged from the keel of the hindermoſt to that of the foremoſt,

foremoſt, paſſing through the keels of all the others, from the van to the rear; ſo that they are, according to the ſea phraſe, in the wake of each other.

*WAKE.* A ſhip's wake is the dead water which the ſhip leaves behind; and for one ſhip to come into another's wake, is to come into the ſame track that ſhe ſails in; conſequently, the line for action cannot be formed without the ſhips come into the wakes of each other.

*WEATHER-LINE.* The weather-line has this advantage, that it may approach the enemy, and determine the time of action; and if it is more numerous than the lee-line, it may ſend a detachment to cut off part of the enemy's rear; is leſs incommoded by the ſmoke, and may ſend in their fire-ſhips among the enemy's fleet; but then, in rough weather, the leeward ſhips can open their lower ports, and uſe the heavy artillery, when the windward line cannot, leſt the ſhips ſhould take in too much water.

*LEE-LINE.* The lee-line is greatly incommoded by ſmoke, but then they can eaſily take away their diſabled ſhips. In ſhort, the advantage or diſadvantage between the windward and the leeward lines, depend much upon the wind and ſmoothings of the ſea, in fine weather the windward line has infinitely the advantage; but in high winds and rough ſeas, the leeward line may be ſaid to have the advantage.

*SIGNAL.* Signals are certain little flags or colours hauled out as a token what to do, or give notice of ſomething; and generally, in engagements, a frigate is appointed to repeat ſuch ſignals, of which every ſhip has a book with the different colours painted thereon, and annexed is an explanation of each of the ſignals.

*LOG-BOOK.* The log-book is a large demy folio, kept upon the quarter-deck, or ſome other convenient part, wherein is ſet down the courſes ſteered, the winds, and all the tranſactions of the day, ſimply as they occur, by the maſter or officer of the watch, from which all the officers take their journals: no more than one is ſuffered on board any ſhip, as it is by this alone the conduct of every officer and man on board muſt be determined.

*LARGE.* To go large, is when a ſhip goes right before the wind: and, to large, is ſaid, when ſhe goes neither before the wind nor upon the wind, but as it were, quartering between both.

*STAYS.* Are ropes which keep the maſt from falling aft.

*STAYS.* To ſtay a ſhip, i. e. to bring a ſhip upon the ſtays, is to manage her tackle and ſails ſo that ſhe cannot make any way forward, and BACK STAYS (in a ſhip) are ropes which go on either ſide of the ſhip, and keep the maſt from pitching forward or overboard.

*CABLE'S-LENGTH.* The length of the cable, 120 fathoms.

*To FISH A MAST.* To ſtrengthen it by fixing about it a concave piece of timber on the outſide, either when damaged, or to prevent any accident that may happen.

*FORE-TOP.* The platform on the top of the foremaſt.

*To FURL the SAILS.* To roll them cloſe up to the yard, ſtay, or maſt, and faſten them with a line called the furling-line.

*AFT.*

*AFT.* Behind; towards the ſtern; between the ſtern and the main-maſt.

*LOG.* A ſmall piece of timber, with lead ſo contrived as to ſwim upright in the water, the other end being faſtened to the log-line, a little cord furniſhed with knots or diviſions, to mark the ſhip's time of ſailing.

*PEAK, or PEEK.* A ſlope on the mizen-ſail, where ſignals are hung.

*To REEF a ſail.* To roll up the ſail the diſtance of a reef, hence *double-reefed*, when two reefs are pulled in, to reduce the quantity of ſail, and conſequently to impede the courſe of the ſhip.

THE

# THE

# TRIAL

## OF

## *VICE-ADMIRAL SIR HUGH PALLISER*

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FIRST DAY, MONDAY, APRIL 12.

AT half paſt ten o'clock the Admirals and Captains aſſembled on board the SANDWICH, in obedience to the order of the Commander in the port, when the following ſenior Admirals and Captains were appointed to try Vice-Admiral Sir Hugh Palliſer.

Vice-Admiral DERBY, Preſident.

Rear-Admiral DIGBY.

CAPTAINS.

| | |
|---|---|
| Sir CHALONER OGLE, | GOODALL, |
| KEMPENFELT, | CRANSTON, |
| PEYTON, | LINZEE, |
| BAYNE, | COLPEYS, |
| M. ROBINSON, | WALTERS. |
| DUNCAN, | |

G. JACKSON, Judge Advocate.

Captain Bennet, of the Lenox, ſent an excuſe to the Court for not obeying the order, on account of the ill

ſtate of his health. A motion was made for the Court to be cleared. On the return of ſtrangers, the Judge Advocate adminiſtered the oath, and the priſoner addreſſed the Court in the following manner:

"Mr. Preſident,

"There is a matter which I beg leave to mention "at the out-ſet of the trial.

"With a view to keep alive the prejudices that "have been raiſed againſt me, it has been ſaid, that I "have ſolicited this Court-Martial on myſelf, to bring "again into diſcuſſion the conduct of Admiral Keppel.

"I ſolemnly declare I brought it for my own vin-"dication. Therefore I am determined, in the courſe "of this proceeding, to have no retroſpect to any for-"mer tranſactions in my defence, but to reſtrict my-"ſelf wholly to my own juſtification."

The Judge Advocate deſired to know whether the Court would proceed upon any of the criminating parts contained in the minutes of the trial of Admiral Keppel, in obedience to the order of the letter of direction from the Lords of the Admiralty, which letter was read, and ſays, "That as there appeared ſe-"veral circumſtances in the minutes of the trial of "Admiral Keppel of a criminating nature againſt Vice-"Admiral Sir Hugh Palliſer, which required a very "ſerious inveſtigation, they direct the Court-Martial "to inquire into theſe circumſtances." It was ſigned,

SANDWICH.
J. BULLER.
LISBURNE.
MULGRAVE.

A motion was then made by Captain Peyton for the Court to be cleared. Strangers were abſent about an hour, and when they returned into Court, the Judge Advocate ſaid, "They had come to the reſolution to "try him on the minutes of the former Court-Martial.

ADMIRAL KEPPEL was then called, when he addreſſed the Court in the following manner:

"Before I take the oath, I muſt beg leave to ſay a "few words. From the liſt of witneſſes you have

"read

" read, on the part of the Crown, I find I am the firſt. " I am far from being a volunteer in this buſineſs. I " ſtand in a very painful ſituation, and the evidence I " give I hope will not go abroad to the world carry- " ing the appearance of rancour, ill-will, or revenge. " I am no proſecutor: I wiſh not to be an evidence: " I wiſh to be excuſed, and ſhould be happy if the " Court would diſpenſe with my evidence. My rea- " ſon is, that I cannot anſwer yes or no to the queſtions " propoſed to me; but muſt neceſſarily trouble the " Court with ſome reaſons, motives, and opinions, that " influenced and directed my conduct, which cannot " be disjoined from the buſineſs before you; at the " ſame time, if the priſoner ſhould inſiſt upon my evi- " dence, or if the Court ſhould think it neceſſary, I " ſhall certainly anſwer every queſtion that is propoſed " to me, with the moſt direct openneſs."

Strangers withdrew, and on their return, the Court informed the Honourable Admiral, that his evidence could not be diſpenſed with.

The oath was then adminiſtered, and the Judge Advocate ſaid,

You are deſired to relate to the Court the tranſactions of the 27th of July, ſo far as reſpects the conduct of Sir Hugh Palliſer.

*Admiral Keppel.* My attention was wholly taken up, every hour, every minute of that day, and it would be morally impoſſible for me to relate to the Court every word, every fact, every ſignal, every circumſtance, in every part of the fleet on that day. I am here ready to anſwer every queſtion, ſtrait and fair; and if I am to anſwer this, I certainly will to the utmoſt of my power. But the Court will be pleaſed to conſider its very great extent, and that it is altogether impoſſible for me, in an even and continued narration of ſo complex a tranſaction, to inform the Court of every particular. Great allowance muſt be given to me, and I muſt be pardoned if, upon recollection I ſhould recur to facts that I may omit in the firſt relation. A gentleman may give you a recital of

the tranſactions of his own ſhip, but the Court will pleaſe to conſider that my attention went to every ſhip in the fleet. A recital upon oath is a moſt ſerious matter! I am however in the hands of the Court, ready to anſwer, if they think proper that I ſhould do ſo. If any ſpecific queſtion is propoſed to me, I will certainly give my anſwer with the moſt direct preciſion: but I cannot anſwer with the ſame accuracy, to a general, unſpecified queſtion of ſo immenſe an extent, and which includes every obſervation, every word, and every fact that occurred to me on that day.

Captain Colpoys moved for the Court to withdraw.

On their return the Preſident ſaid, the Court were aware of the difficulty the Admiral felt himſelf under from the extent of the queſtion propoſed; but they wiſhed he would give them ſuch general information of the tranſactions as he could, in anſwering the ſpecific queſtions that would be aſked.

*J. Adv.* What number of ſhips did Sir Hugh Palliſer's diviſion conſiſt of on the 27th of July?

*A.* Ten.

*Q.* How many ſhips did you order for chace?

*A.* I think ſix or ſeven. I muſt explain that matter. I reſted the moſt entire confidence in Admiral Campbell, who was my firſt captain, and to whoſe care, activity and aſſiſtance, I owe the greateſt obligations; we were then in a tedious chace, and I wiſhed to take as much reſt as poſſible; he therefore gave orders in my abſence, and I begged of him to wake me if any occaſion ſhould ariſe, not thinking about my reſt, when there was any material occurrence in the fleet. He came down and waked me in the morning of the 27th, and told me that the French fleet were further off, but that he had ordered ſeveral of the Vice-Admiral of the Blue's ſhips to chace to windward, becauſe he was under ſo eaſy a ſail, and ſo much to leeward, that the diviſion would be uſeleſs, at the ſame time that our diſtance was increaſed from the enemy.

I perfectly approved of the order, as indeed I did of all that gentleman ever gave. I had then no hopes of coming

coming to an action at that time, but thought it very neceſſary to have all the ſhips as near me as poſſible.

*Q.* Did it appear to you that Sir Hugh Palliſer carried as much ſail as he could, after the ſignal to come into action?

*A.* After the ſignal, he carried as much ſail as he could, and uſed every means to bring up the Formidable, and to get into action.

*Q.* Did it appear to you, that during the action he behaved as became an officer of his rank?

*A.* It appeared to me, that he ranged along the French juſt as well as any other ſhip that came either before or after him; and in doing ſo, he did his duty as a flag officer. I do not wiſh to narrow the queſtion.

*It being near three o'clock, the Court adjourned.*

## SECOND DAY, TUESDAY, APRIL 13.

*At ten o'clock the Court met again, and Admiral Keppel's examination was continued.*

*J. Ad.* When you came out of action, having paſſed the rear of the French, did you make any ſignals?

*A.* After I paſt the rear of the fleet, my firſt duty, as Commander, was to look where the ſhips were; as ſoon as I could perceive the fleet for ſmoke, I ſaw the Vice-Admiral of the Red trying to weather me; his conduct warmed me, he was acting like a man; the other ſhips looked to me as if they had received damage; but no maſts or yards being down, it naturally occurred to me to make the ſignal for wearing; that wearing was to lay their heads to the enemy: The Victory was not in condition to do ſo immediately: ſhe did ſoon after; and then I made the ſignal for the line of battle a-head—the Court will think that I cannot be particular as to the moment of ſignals.

At that time the ſhips of the Vice-Admiral of the Blue paſſed me, the Formidable paſſing laſt, although their ſtation was a-head on that tack; their reaſon, no doubt, was that their rigging was hurt. When I wore to the enemy, I thought it would be a proud day for England; but I blame nobody. The Red Diviſion

wanted the leaſt, the Centre more, and the Rear diviſion moſt time to repair, in proportion to the times that they came out of action. I therefore made the ſignal to wear again, and all thoſe wore in the ſpace of thirty or forty minutes. I beg to refer the Court to thoſe Officers that took minutes.

*Q.* How long was the Victory on the larboard tack?

*A.* She was upon the larboard tack till I thought it no longer judicious, nor proper, nor poſſible for me to bear the name of an officer of my rank to continue ſo. I cannot ſpeak to the exact time, I muſt refer to the minutes. I continued till I ſaw the enemy forming on the ſtarboard tack, my line not forming, and as long as I thought there was the leaſt probability of forming my line.

*Ad. Digby.* After the ſignal for wearing, what was the next ſignal.

*A.* The ſignal for the line of battle a-head. There was no other ſignal for the fleet but the ſignal to wear again.

*Q.* For what purpoſe were thoſe ſignals made, and on what tack was it thereby intended the fleet ſhould be formed?

*This queſtion was altered to the following.*

*Q.* When the ſignal for the line of battle was firſt made, on what tack was it intended that the fleet ſhould be formed?

*A.* On the tack that the Admiral was.

*J. Adv.* What was the poſition of the Formidable, when you was on the larboard tack, and did ſhe obey thoſe ſignals?

*A.* The Formidable, as I ſaid before, was the laſt ſhip that paſſed the Victory. I cannot ſay, in the ſituation I now ſtand, that ever the Formidable was on the larboard tack; there was evidence on the former trial to that purpoſe; but if I was put to the torture I could not ſay ſo. I ſaw her paſs the Victory. The Victory had then the ſignal flying, and her obedience to that ſignal directed her not to paſs the Victory, but to remain a-head.

*Q.* Was the Vice-Admiral of the Blue's diſobedience of that ſignal the cauſe of your not re-attacking the French fleet?

*A.* No, certainly not. The French fleet were in a body, drawing out a line in the uſual way, and, as I think, in a regular manner, ſo as Monſieur Conflans did when he met Lord Hawke. I therfore ſaw the French were capable of forming their line; and I ſaw that my own fleet were not. The Formidable and the Victory undoubtedly could not attack the French fleet, and I had no fleet to throw away, but to beat the French with. *The Formidable certainly paſſed me, contrary to orders;* but if the Formidable had remained, I could not have attacked the French at that moment. If I could have weathered the French with my line, I ſhould certainly have wore and laid my ſtern to them; as I did, I was obliged to wear and give my fleet time to form on the contrary tack. I am aſked whether the Formidable obeyed the ſignal? *I anſwer ſhe did not: ſhe took upon herſelf to do that which I was going to do—but ſhe did it without order.*

*Q.* Did it appear to you that the Vice-Admiral of the Blue, in the Formidable, was not in condition and ability to obey thoſe ſignals?

*A.* Undoubtedly it did not. I ſaw no greater diſability in the Formidable than there was in the Victory; leſs indeed, for the Victory was obliged to unbend her main-top-ſail. I ſaw no diſability whatever in the Formidable at that time.

*Q.* Did the Formidable obey, or repeat thoſe ſignals?

*A.* I did not ſee the Formidable repeat thoſe ſignals at all. She may have hoiſted the pennant for wearing, but I neither ſaw it, nor was it reported to me that ſhe had.

*Q.* What was the next general ſignal after the ſignal for wearing.

*A.* I had no ſignal for an inverted line; but there was a general order about to be ſent to Sir Robert Harland, to form a-head, aud make an inverted line; but before Captain Sutler departed I ſaw the painful

neceſſity of directing him to form in the rear. The French at that time loſt an opportunity which only the want of ſpirit or the condition of their hulls could have occaſioned. The ſignal for wearing was then made, and the Victory paſſed again the ſhips he had paſſed before. The Victory led two or three points from the wind. The Vice-Admiral of the Blue went then to windward, and the ſignal of the line was flying. It was obſerved that he did not make ſail in obedience; nay that the diſtance was increaſed thereto; and Admiral Campbell, or ſome other of the officers, ſaid, that perhaps he did not ſee the ſignal for the line; they bore away a little more, and it was hauled down to hoiſt the ſignal for coming into the wake. Minutes grew hours, and I waited with the moſt anxious impatience. I was wore out. I loſt my patience to a degree of indiſcretion. I wiſh my evidence here had been diſpenſed with. I ſpeak it with the greateſt concern. I only waited for the Vice-Admiral. I myſelf called two frigates to me, the one I ſent to Sir Robert Harland, directing him to take his ſtation a-head; and the other, the Fox, I ſent with a particular meſſage to the Vice-Admiral of the Blue; the particular terms of the meſſage I do not now remember, but I told him that I only waited for him, and his diviſion, to renew the engagement; had he come down, I ſhould certainly have forced the enemy to fight, or run away by daylight, as they afterwards did by night. I am ſorry to ſay, he did not come down, as we even then had daylight ſufficient for a ſecond attack. I cannot ſay with how much pain I am forced to give this evidence to the Court, but it is in anſwer to the queſtion.

Here the Honourable Admiral ſpoke with the tear ſwimming in his eye, while every feeling boſom in the Court ſympathiſed with his ſenſibility.

*Q.* Did the Formidable bear down in obedience to thoſe orders?

*A. Never.*

*Q.* What was the poſition of the Vice-Admiral of the Blue from five to ſeven o'clock?

*A.*

*A.* The Formidable ſeemed to me to be governing herſelf, and keeping about the ſame bearings all that time; ſhe had her maintop-ſail down for four hours; ſhe was a very remarkable ſhip, and eaſily diſcovered: as to her poſition, I did not ſet her by compaſs, nor even ordered her to be ſo. But, as I had no deſign to cover myſelf on that important day, but, as far as a ſeaman's eye can ſay, ſhe appeared a point, or a point and a half abaft the beam; and I think that to have got into her ſtation, the Victory going only two knots and two fathoms, ſhe had to go five or ſix points from the wind.

*Q.* What time between five and ſeven did the Red diviſion get into its ſtation?

*A.* The Milford, that was ordered to go with the meſſage to Sir Robert Harland, went from the Victory between four and five, and the Vice-Admiral of the Red made great ſail: immediately after he ſet ſail, he would have been of uſe. Had I ſeen the Vice-Admiral of the Blue abaft his helm a-weather, I had an operation quick in my mind, and what I ſaw proper to be done, I ſhould certainly have done. If I may ſuppoſe in the matter, I ſhould think he was in his ſtation by half paſt ſix, but I cannot ſay poſitively.

*A. Digby.* What anſwer did the Fox bring to the meſſage you ſent to the Vice-Admiral of the Blue?

*A.* The Fox received directions from me to proceed to the Vice-Admiral of the Blue. The orders I delivered myſelf; I was agitated, I ſpoke in warmth, and I therefore cannot recollect them particularly; I muſt refer them to Admiral Campbell, Captain Windſor, and thoſe that received them from me: they were not ſo civil as I could wiſh they had been. As to any anſwer from the Vice-Admiral, I received none.

*J. Adv.* What frigate did you appoint to repeat ſignals?

*A.* The Arethuſa, Capt. Marſhall. He alone repeated ſignals: I could not ſpare frigates to repeat ſignals for the Vice-Admirals. I had not frigates ſufficient.

*Q.* Did the Arethuſa repeat the ſignals? *A.* I

*A.* I cannot ſay poſitively, I believe ſhe did. I appeal to every one, if ever they ſaw, in ſo large a fleet, the ſignals ſo ſuddenly repeated. So that I concluded ſhe did repeat the ſignals.

*Q.* Was the Formidable's ſituation ſuch as to be able to ſee thoſe ſignals either from the Victory or Arethuſa?

*A.* Moſt undoubtedly: ſhe could not fail ſeeing them.

*Q.* What time?

*A.* Between five and ſeven.

*Court.* From the time after the fleet was on the ſtar-board tack?

*A.* Moſt undoubtedly; all the time till dark ſhe might have ſeen them.

*J. Adv.* Were there any of the Vice-Admiral of the Blue's diviſion in the line about ſix o'clock, and how many?

*A.* It is a queſtion of great nicety. The queſtion is, what they thought their ſtation?

If I were to give you a direct anſwer to that queſtion, I ſhould ſay there were none in the wake of the Victory. They were with the Vice-Admiral of the Blue, all, except the Ramilies and Robuſte, which lay to leeward. There were none of the Blue diviſion in the line of battle a-ſtern of the Victory.

I cannot ſay they were not in their ſtation; it is a point of diſcipline. They were with their own Admiral. At five o'clock there were no ſhips in the wake of the Victory, but the Foudroyant. The Prince George and the Bienfaiſant were within a minute of it, and gained it on the inſtant I thought it proper they ſhould do ſo. Before I ſailed again I decided this point of doubt, and appointed the line always to be formed from the centre. This I did with the utmoſt delicacy, providing only againſt any ſimilar accident in future, but having no retroſpect to the conduct of any.

*Q.* Had the Vice-Admiral of the Red made ſail from the rear time enough for the Vice-Admiral of the Blue to take his ſtation there? *A.* I

*A.* I never thought that the one diviſion being there could prevent the other from taking his ſtation. The Vice-Admiral of the Red weathered the Victory by more than a mile. There was a great vacuum between the Foudroyant and the Red diviſion; but I don't think it had any thing to do with the Blue diviſion at all. Giving every allowance to the Vice-Admiral of the Blue, for coming out of the line of fire laſt, time was granted to him; but at half paſt four I thought there could be no excuſe to myſelf, or to my country, for not obeying the ſignal then; the vacuum between the Red diviſion and the Foudroyant was large. But if the Vice-Admiral of the Red was an objection before, it could be none when the meſſage was ſent; as orders were diſpatched, at the ſame time, to the Vice-Admiral of the Red to leave that ſtation, and were immediately obeyed. The impediment was removed at five o'clock, but I think there could be no impediment at all. Every body muſt have ſeen that the Vice-Admiral of the Red had left his ſtation: he received the order for it ten minutes at leaſt ſooner than the Vice-Admiral of the Blue.

*Q.* When the Red diviſion got into their ſtation at half paſt ſix, how did the headmoſt ſhips of the French bear with reſpect to the Victory?

*A.* Upon the lee-beam, at about random ſhot.

*Q.* Did you make any ſignal after ſeven o'clock?

*A.* I made a ſignal for all the ſhips of the Blue diviſion, except the Formidable, at ſeven o'clock. I made no ſignals after ſeven.

*At three o'clock the Court adjourned.*

## THIRD DAY, WEDNESDAY, APRIL 14.

*The Examination of Admiral Keppel continued.*

At what time, or nearly, were the ſhips of the centre diviſion formed in line of battle in the morning?

*A.* Except the Courageux and the Vengeance, which were both damaged, and were repairing to leeward, and the Prince George and the Bienfaiſant, which were

were formed a-head, and which I approved of, by not altering; the centre diviſion were formed very ſoon after I got about on the ſtarboard tack; I ſuppoſe about half paſt three. Some difference in the line, indeed, took place, on account of my leading large, but the ſhips were all in a line immediately after I had got on the ſtarboard tack, excepting the Courageux and the Vengeance; the Courageux ſoon got into her ſtation, but the Vengeance could not. At the ſame time I muſt inform the Court, that there were two ſhips that formed a-head of the Red diviſion; I did not know them at the time, but they were, I have ſince learned, the Berwick and the Monarch.

*Q.* Do you know of any other circumſtance in the conduct of Sir Hugh Palliſer, on the 27th or 28th of July, other than what you have already ſtated to the Court, which you think criminal, and which the Court in your opinion, ought to be acquainted with?

*A.* I cannot give any anſwer to this queſtion. There are many circumſtances, I believe came out in the courſe of the late trial, which the Court may, perhaps, think behoves them to inquire into; but God forbid that I were bound to the diſagreeable duty of pointing them out. The orders of the Admiralty to this Court are not clearly within my remembrance, but I do not conceive that I am directed by them to lead the Court to matters of accuſation or of crime; and from myſelf I proteſt againſt it, in the moſt expreſs terms. I ſtand in the moſt delicate ſituation, as in the late trial I ſtood perhaps in the moſt unprecedented one; and, if I am forced to anſwer this queſtion, I ſhall conſider myſelf in the moſt trying, and painful one. Were I the accuſer, which thank God I am not, I ſhould think it my duty to my country to look into thoſe minutes, and fulfil the meaning of the queſtion. As I am not, I ſhould not think my mind at eaſe to anſwer it; and I hope the Court will conſider the delicacy and the pain of ſuch a taſk.

The court was cleared, and when ſtrangers returned, the Preſident addreſſed the Admiral as follows:

"We

"We are here to inquire into the conduct and be-
"haviour of Sir Hugh Palliſer, on the 27th and 28th
"of July, and we muſt therefore deſire you to in-
"form the Court of every circumſtance which you
"think reprehenſible, and which you have not already,
"as to his conduct on thoſe days mentioned, and
"which came within your own knowledge.

"If you wiſh to have the order of the Admiralty
"read, the Judge Advocate will do ſo."

Sir Hugh Palliſer then addreſſed the Court in a few words.

"I requeſt that Admiral Keppel, in anſwering that
"queſtion, may ſpeak from his own knowledge, and
"not from that of hearſay; and that in ſpeaking to
"my conduct, he may be reſtrained to the 27th and
"28th of July. I do not ſay this from the conſci-
"ouſneſs of deficiency in any other time; but as the
"preſent inquiry is confined to thoſe days, I come pre-
"pared for my defence accordingly."

Admiral Keppel informed the Court, that he had recollected himſelf in ſome little matters of his evidence, which he hoped the Court would permit him to correct. In his anſwer, reſpecting the formation of the line, he had omitted to ſay, that the Sandwich was not in the line, ſhe being conſiderably to leeward, repairing her damage. He hoped, in the courſe of his very long examination, if any other circumſtance ſhould occur to him, wherein he had either miſtated, or failed to ſtate ſufficiently clear, any fact, particularly if it ſhould tend againſt the Priſoner, that he ſhould be indulged with an opportunity of correcting himſelf, and that he ſhould be queſtioned ſtrictly and cloſely to that effect.

The order of the Admiralty was then read, the addreſs of the Priſoner to the Court; and the Judge Advocate was about to put the former queſtion again, when

Captain Colpoys moved the Court to withdraw. They were out about fifteen minutes, and on their return the Judge Advocate informed the Priſoner, that the

the paper he had read could not be admitted on the minutes, becauſe what he requeſted had been already granted.

*The former queſtion was then put.*

*A.* My examination has been ſo very long, that I proteſt I do not recollect particularly all that I have ſaid.

To ſpeak in general terms. The conduct of Sir Hugh Palliſer, I have ſaid, in going along the French line, has had my praiſe. He acted as well as any that either went before or after him: he had my full praiſe; and that praiſe which I gave him to the Admiralty has been made uſe of in the world againſt me. After the action, I have ſpoken to his conduct, but I declare I cannot ſay poſitively what parts I have ſpoke to, and what have been omitted. In general I muſt ſay, that I proteſt I cannot charge my memory that Sir Hugh Palliſer obeyed any one ſignal or order that I iſſued.

If the Priſoner in his queſtions ſhould preſs any point wherein he did his duty, and ſhould by that means refreſh my memory, I am ſure I ſhall be moſt ready to do him every juſtice, and give him every praiſe that is conſiſtent with ſtrict truth. After it was dark, I ſaw nothing, and knew nothing of the Vice-Admiral of the Blue. Therefore, neither on that time, nor on the 28th of July, can I ſay any thing of his conduct from my own knowledge.

Admiral Keppel's evidence, on the part of the Crown, was here cloſed; when he begged that two immaterial expreſſions might be altered; the firſt was, that he made uſe of the word *gentlemen*, where he thought *ſeamen* or *officers* would be more proper; and where he had ſaid, "that all the art of man could not "have wore the Victory more than ten minutes ſooner "than ſhe was wore," he begged it might be altered to "all the art of man would not have made it *prudent* "to have wore."

CROSS-

CROSS-EXAMINATION BY SIR HUGH PALLISER.

*Sir Hugh P.* Did not I viſit you on board the Victory on the morning of the 29th of July, the ſecond day after the engagement?

*Admiral Keppel.* I don't remember the particular day, but it was a day or two after the engagement.

*Q.* Did you then ſignify to me any diſapprobation of my conduct?

*A.* To that I muſt anſwer, I did not; but that did not take away any part of the obſervations I had made.

*Q.* Did you not then ſhew me a draft of a letter to the Admiralty?

*A.* I did: but that letter, to the beſt of my recollection, was not that which I ſent to the Admiralty.

*Q.* In that letter which you did ſend, was not my name mentioned? *A.* Yes.

*Q.* Did we not converſe upon different parts of that letter which you was pleaſed to ſhew me, particularly that part which mentioned the French being beaten?

*A.* I think it is moſt probable that we did; but I cannot, upon the oath I have taken, ſay that I recollect what particular part; I am not correct enough.

*Sir Hugh P.* I beg leave to aſſiſt the Admiral's recollection, by aſking him if I did not ſay I approved of that part of the letter, and added, that in coming along the line I obſerved many of the ſhips make a ſlack fire, and that the men did not ſtand to their quarters?

*Admiral Keppel.* The Vice-Admiral does not aſſiſt my recollection; I do remember that I heard he ſaid ſomething of that kind to Rear-Admiral Campbell. As a proof that I do not recollect it, I may ſay there was a moment, when, if I had recollected it, I muſt certainly have made uſe of it.

*Sir Hugh P.* I beg to bring to the Admiral's recollection another circumſtance. Did I not ſay, that the two laſt ſhips which I engaged, appeared to be French ſhips, by their having no holes through their ſails? and I hope he will remember his anſwer.

*Admiral Keppel.* I am ſure, Sir, if I remembered my anſwer,

anſwer, I ſhould repeat it.—It is not ſingular, that I ſhould not be accurate in my recollection of theſe matters, conſidering the many things that engaged my attention. I am ſorry, however, that I do not remember this, becauſe the Vice-Admiral ſeems to wiſh me to repeat it. I did hear that he ſaid ſo to Admiral Campbell, but I do not recollect that he ſaid it to me. I do not take any notes of converſation, my memory is ſometimes very full, and it is neceſſary it ſhould be ſo.

*Q.* Did that letter which you did ſhew me contain approbation of my conduct?

*A.* That letter was tore; I did not like it; I do not recollect what it contained; but, as the other letter contained approbation of your conduct, in going along the French line, I ſuppoſe the firſt did, and I believe that neither the one nor the other went further. Your conduct, in that particular, in common with the other officers, required my approbation. I had many things operating on my mind when I wrote that letter to the Admiralty; and the approbation I gave you for paſſing the line, I have all along perſiſted in.

*Q.* Did either the letters which you ſhewed me on that day, which you ſent to the Admiralty, confine your approbation to my conduct in paſſing the line?

*A.* As to the one letter, it is totally out of my recollection, and it is therefore to be ſet aſide; as to the other, ſince the Vice-Admiral preſſes me, I muſt explain to the Court the tendency and the motives that impelled me to write it. I am ſorry that the Vice-Admiral has forced me to the explanation; I wiſh the Vice-Admiral had excuſed me, for I ſtruggle with my mind in the recital.

The Priſoner interrupted him, and ſaid he wiſhed not to know his meaning.

The Admiral thanked him, and ſaid he was pleaſed that he was not to explain. The letter was well known to all.

*Q.* Did you expreſs diſapprobation of my conduct at any time when we were at Plymouth?

*A.* In

*A.* In anſwering that queſtion I am ſorry that I muſt go ſo far. I muſt inform the Court of the reaſons that operated on me at that time.

The Vice-Admiral ſaid, he wiſhed only to have the *yes* or *no* to his queſtion, and not the motives of the Admiral.

The Admiral anſwered, that he was confined in a manner, and unleſs he was to give his ſolid reaſons upon oath, he could give little ſatisfaction to the Court; for he diſapproved of the Vice-Admiral, and yet he had reaſons for not expreſſing his diſapprobation to him.

*Q.* Whilſt you were at Plymouth, did you not communicate to me a letter from the Secretary of State, wherein is his Majeſty's ſatisfaction at your account of my conduct?

*A.* I put that letter into your hand and to others; it contained full approbation of my conduct for the victory gained over the French fleet, by the King's fleet, and of the other officers.

*Q.* Was not my name particularly mentioned, and my conduct approved of?

*A.* The letter is on the table, and will give the Court a better anſwer than my memory can furniſh.

The letter was read, dated Aug. 2d, 1778.

*Q.* Before you left Plymouth, did you not write a letter to the Secretary of the Admiralty, approving of the conduct of Sir Robert Harland, me, and the other officers?

The Admiral obſerved, that he had gone through a ſtring of pretty queſtions, and before he could proceed to anſwer it,

Captain Colpoys moved the Court to be cleared.

In a few minutes it was opened again, and the queſtion was put.

*A.* I cannot anſwer that queſtion without giving my reaſons for writing that letter, becauſe it is merely yes and no.—You have only to look into the book.

The letter was read at the deſire of the Vice-Admiral.

*Q.* Do you remember ſhewing that letter before you ſent it off?

*A.* I do not remember that I did; but if I did not, it was a mere omiſſion. My reaſons for writing that letter were, that ſeveral of the officers of the fleet were reflected upon; and it gave me particular pain that any brave and worthy man ſhould again go to ſea with uneaſineſs upon his mind. One of theſe officers is now a member of this Court *. A man of the greateſt bravery and worth: his feelings were delicate on the occaſion. Another brave commander was reflected on in the newſpapers; he was exceedingly hurt, and he came to me under all that pain which reflections are apt to impart. He valued the report of the newſpapers more than I did. I therefore thought it my duty to reconcile every thing for the good of my country; the time was critical; and I was anxious that no one man ſhould go to ſea with any uneaſineſs in their minds. I wrote the letter to the Admiralty, that they might put it in print, or ſhew it to any gentlemen they might think proper. I ſent an extract of that letter to one of the officers, thinking it would be comfortable to his mind. It was not ſent to the other, but it was a mere omiſſion.

The Honourable Admiral here withdrew, having firſt aſked if his ſtay in Portſmouth would be any further required. He was told it would not.

REAR-ADMIRAL CAMPBELL WAS THEN CALLED.

The order of the Admiralty was then read.

*J. Adv.* You will pleaſe to relate to the Court any thing that you know relative to the conduct of and behaviour of Sir Hugh Palliſer on the 27th and 28th of July?

*A.* I ſhall, agreeable to the oath I have taken, anſwer every queſtion that the Court ſhall be pleaſed

* Admiral Digby.

to

to put to me; but I cannot, at this diſtance of time, undertake to give a hiſtory of Sir Hugh Palliſer.

*Q.* Give an account of the poſition of the Vice-Admiral of the Blue at daylight in the morning of the 27th, relating to his ſituation and proceedings before he came into action.

*A.* The Vice-Admiral of the Blue at daylight was about three miles diſtant from the Victory to leeward, under his main-ſail. He was fallen much more to leeward than he had been the night before, and it therefore ſurpriſed me, as well as the other officers upon deck, that he ſhould, in ſuch a ſituation, carry his main-ſail, which drove him farther to leeward, and increaſed his diſtance from the enemy and the centre diviſion. I therefore thought it very neceſſary to order the ſhips of the Blue diviſion, that were under an eaſy ſail, to chaſe to windward. In a former trial, a good deal has been ſaid of this ſignal, and it has been the opinion of ſome that it was not the proper one. It appeared, however, to me, at the time, to be the moſt eligible for that purpoſe, and, indeed, the only one that could anſwer to bring up the ſhips to the centre, make the fleet compact, and near the enemy. The Admiral approved of it, and I ſhould be very happy to hear from any gentleman, what ſignal would have been more applicable to the occaſion. After that time I ſaw very little of the Formidable, till the Victory came out of action, except that ſhe repeated the ſignal for tacking. I forgot to ſay that the Formidable made more ſail after the chaſing ſhips paſſed him.

*Q.* Did it appear to you, that Sir Hugh Palliſer did every thing in his power to bring his ſhip into action?

*A.* After the ſignal I believe he did.

*Q.* Did it appear to you, that in the action he behaved as became an officer of his rank.

*A.* I believe he did. I ſaw very little of him during the action.

Q. Did you look to the Formidable on her coming out of action, and what was her ſituation with reſpect to the Victory?

*A.* I do not recollect ſeeing her till a little before ſhe paſſed the Victory on the ſtarboard tack, and then ſhe was a little on our lee bow.

Q. What ſignals were made on coming out of action?

*A.* The ſignal was made to wear, and then the ſignal for engaging was hauled down.

Q. At what time were thoſe ſignals made, and did Sir Hugh Palliſer obey them?

*A.* The ſignal for wearing was made immediately on our coming out of action, but we could not wear in the Victory for ten minutes, becauſe there were ſome ſhips on our lee quarter, which we ſhould have been in danger of being aboard of them; and as ſoon as we had wore, the ſignal for the line of battle a-head at a cable's length aſunder was made.

Q. How long was the Victory on the larboard tack?

*A.* About an hour and a quarter. We wore at ſeven minutes after three, from the larboard to the ſtarboard.

Q. What was the poſition of the Formidable, and did ſhe obey thoſe ſignals while the Victory was on the larboard tack?

*A.* I have already ſaid, I did not obſerve the Formidable till ſhe paſſed the Victory on the ſtarboard tack; and I cannot ſay whether ſhe obeyed or repeated them or not.

Q. Did the Formidable obey or repeat the ſignal for the line of battle?

*A.* The Formidable did not obey the ſignal for the line the whole day, neither while we were on the ſtarboard or the larboard tack, that I ſaw. Her paſſing us on the ſtarboard tack, while we were on the larboard tack was in direct diſobedience to the ſignal, inſtead of obeying it; nor did I ever ſee her repeat the ſignal the whole day.

Q. Do you think that in paſſing the Victory the Formidable could ſee the ſignal for the line?

*A.* It was impoſſible that ſhe could fail of ſeeing it

if

if ſhe looked for it; but the Victory was not the ſhip where the Formidable was to look for the ſignal; ſhe was to look to the repeating frigate.

*Q.* What frigate repeated it?

*A.* The Arethuſa, Captain Marſhall.

*Preſident.* Was the Arethuſa in ſuch a ſituation, as that the Formidable could ſee her?

*A.* The Arethuſa was on the Victory's lee bow, ſoon after the ſignal was repeated. She muſt have made ſome trips.

*J. Adv.* Were any other ſignals made to enforce a compliance, or were there any other means uſed for that purpoſe?

*A.* After the ſignal for wearing, and when the Victory wore large, we fell to leeward, and when it was ſeen that the Formidable did not follow, the ſignal for the line was hauled down, that the Blue flag might be ſeen more diſtinctly; it was down but about ten minutes.

*Q.* Did the Formidable repeat the ſignal for ſhips to come into the Admiral's wake?

*A.* I have ſaid ſhe did not obey the ſignal, nor come into the Admiral's wake all the afternoon. She repeated the ſignal for the other ſhips of her diviſion to come into the wake, but did not obey it herſelf, nor make any attempts towards it. I watched her with much anxiety all the time.

*Q.* Were any other means uſed to make her obey the orders?

*A.* The Fox was ſent with directions for her to come down with the ſhips of her diviſion, as the Admiral only waited for that to renew the action.

*Q.* Did it appear to you that the Fox gave him theſe orders, and what time was it?

*A.* It was about five o'clock when I hailed the Fox, and in about half an hour I ſhould think by the diſtance ſhe joined the Formidable.

*Q.* Did the Formidable bear down in obedience to the orders ſent by the Fox?

*A.* I have already ſaid ſhe did not bear down the whole day, nor make any attempt towards it, that I ſaw.

*At half paſt three o'clock the Court adjourned.*

FOURTH DAY, THURSDAY, APRIL, 15.

At ten o'clock the Court aſſembled; but Captain Cranſton having been taken exceedingly ill, when he left the Court on Wedneſday afternoon, Mr. Lucas, the ſurgeon who attended him, came to the Court this morning, and declared that the honourable Member was ſo ill that he did not think it poſſible for him to continue his attendance at the Court. The Court aſked him if he thought it was probable he would be ſo much recovered as to be able to attend, if they adjourned for one day? He ſaid he thought it was not. The Court thought proper to retire for a moment, to conſider the propriety of an adjournment. In a few minutes they returned, and the Judge Advocate adminiſtered an oath to the Surgeon, who depoſed, That the Captain was afflicted with a rheumatic complaint in his ſtomach and head; but he could not ſay whether the effect of a bliſter, which he had applied, might not recover him, ſo far as to enable him to attend his duty as a Member of the Court on Saturday. He was not certain of this. On this the Court again retired, and when they returned the Preſident ſaid, that they had agreed to adjourn the Court whilſt the next morning; and ordered the Surgeon to attend at nine o'clock, to give them the neceſſary information before the Court was opened.

FIFTH DAY, FRIDAY APRIL 16.

At half paſt ten o'clock the Court aſſembled, and Mr. Lucas, Surgeon, having reported to them, that Captain Cranſton would not, in all probability, be able to attend the Court for ſome days, they agreed to proceed without him, and the Junior Members having changed places,

*Rear-Admiral Campbell was again called to the Bar.*

*Judge Advocate.* Did Sir Hugh Palliſer, by ſignal or otherways, inform the Admiral of his incapacity of obeying the ſignals?

*A.* No.

*A.* No, he did not.

*Q.* Did you yourſelf ſee any diſability in the Formidable, or did the Fox return with any anſwer to the Admiral?

*A.* No, I ſaw no diſability in the Formidable; her fore-top-ſail was unbent, but that could not create any diſability without other damages. The Admiral and I had much converſation about the cauſe of his not obeying the ſignal. It ſtruck me that the Vice-Admiral was certainly wounded; but I could not conceive it to be owing to the diſability of the Formidable; becauſe if it had, I ſhould have believed he would either have informed the Admiral, or have ſhifted his flag on board ſome other ſhip of his diviſion, either of which he had it in his power to do. The Fox did not return to us any more that afternoon.

*Q.* Was the weather ſuch that a boat could paſs from ſhip to ſhip.

*A.* Undoubtedly, more than one had come to us, and had returned to their own ſhips.

*Q.* Was not Captain Marſhall ordered on board the Victory before ſhe wore, and what orders did he receive?

Sir Hugh Palliſer ſaid, there was a fact ſtated in the queſtion that has not been inquired into.

Admiral Digby ſaid, it was a queſtion founded merely on the fact of the Victory's having wore.

*A. Campbell.* I do not recollect the occaſion of his being called. I ſaw him on board; but I do not know what orders he received.

*Q.* What was the ſituation of the Vice-Admiral of the Blue, from five to ſeven in the afternoon, with reſpect to the Victory?

*A.* The Formidable was ſo far upon the Victory's weather-quarter, that the Fox, who made ſail towards her on the larboard tack, could not reach her on that tack. I do not know how many points ſhe was wide her weather-quarter.

*Q.* What was the diſtance of the Formidable from the Victory, when the Fox was ſent to her?

*A. Campbell.* At what time? becauſe ſhe was conſtantly increaſing her diſtance.

*Q.* At five o'clock?

*A.* It is not eaſy to aſcertain diſtances. I think ſhe was about three miles, or between two and three, nearer three than two.

*Q.* Was the Red diviſion at that time in its ſtation a-head?

*A.* No. The Milford had been diſpatched a few minutes before that, to order the Red diviſion to take their ſtation a-head from where they had formed themſelves in the rear.

*Q.* What was the number of ſhips joined with the centre in the line?

*A.* All the centre ſhips were connected; but at five o'clock, two of them whoſe ſtations were a-ſtern on that tack formed a-head.

*Q.* Was the Britiſh fleet, at any time in the afternoon, in a ſituation to have re-attacked the French fleet, if the Blue diviſion had come down and taken their ſtation in the line?

*A.* The centre diviſion was not ſufficiently connected before five o'clock to have re-attacked the enemy; till they were ſo, the Admiral was not diſpoſed to go down to re attack.

*Q.* At what time was the Britiſh fleet in this ſituation, and how ſoon in the evening were they capable of renewing the attack, and how did the French line bear with reſpect to the Engliſh?

*A.* When we wore the firſt time at two o'clock, the Admiral was inclined to proceed immediately and renew the attack, even without getting all his ſhips in a regular line; but when he ſaw that there were many ſhips of his fleet ſtanding on the ſtarboard tack, he found it impoſſible; and even when he wore the ſecond time, he would have gone on had the ſhips joined him. But at five o'clock the centre and the Red diviſions were in a ſituation to have renewed the attack, and the Admiral would certainly have done ſo at that time, if the Vice-Admiral of the Blue had led down

down his diviſion. And then the French fleet were ranging up in a parallel line, ſailing faſter than the Engliſh fleet, but I do not know exactly how they bore.

*Q.* Did the Admiral determine to attack the enemy after five o'clock, without waiting for the line being completely formed?

*A.* Yes, he had all along expreſſed to me his deſire of re-attacking the enemy, providing he could collect his ſhips ſo as to make them ſupport each other, although they might not be in the order preſcribed by the fighting inſtructions.

*Q.* How did the headmoſt ſhip of the enemy bear from the Victory at the time that the centre and Red diviſions were in a ſituation to renew the attack, and how far diſtant?

*A.* Sir Robert Harland very ſoon gained his ſtation a-head, in obedience to the order which I have mentioned. He made very great ſail indeed, and weathered us, I am ſure, more than a mile: he very ſoon got into his ſtation. I have ſaid how the French were at five o'clock; they were ſtill gaining a-head very ſlowly, and I believe they might be at five o'clock about two miles to leeward. One thing I muſt ſay, at five o'clock the Victory had not altered her courſe; but then, having joined the ſhips, ſhe did not go ſo large, but kept her wind all the afternoon. That might occaſion the enemy's headmoſt ſhip to be perhaps rather abaft her lee-beam before five.

*Q.* Was the wind favourable for the Vice-Admiral of the Blue to get into his ſtation. *A.* Certainly.

*Q.* Did it appear to you that the diſobedience of the Vice-Admiral of the Blue to the ſignals and orders of the Admiral, was the cauſe that prevented the attack from being renewed?

*A.* Had the fleet been collected, I am perſuaded that the engagement would have been renewed; and I am ſenſible that if the Vice-Admiral of the Blue had led his diviſion down in obedience to the ſignals and orders, and been connected, as the other parts of the fleet were, the Admiral would have renewed the action,

action, or have attempted to do ſo. He had not given over the intention till between ſeven and eight o'clock; as I underſtood it.

*Q.* Can you aſcertain the time when the Red diviſion got into its ſtation? and do you know how the French fleet bore at that time?

*A.* To the beſt of my knowledge the Red diviſion got into its ſtation about ſix o'clock; I cannot be certain; and at that time the French were before our lee-beam.

*Q.* Did the Admiral aſſign any reaſon for placing the Red diviſion in the rear? and what time did it take place?

*A.* The Admiral, while our heads wore to the northward, had ordered a frigate to Sir Robert Harland to form a-head of us, becauſe we had no ſhips a-head of us, and when we wore again, we had, conſequently, no ſhips a-ſtern; that was undoubtedly the reaſon, the ſame frigate that had been ſent with the firſt meſſage was not without hail, and Captain Sutton was ordered to direct Sir Robert Harland to form a-ſtern: he explained to the Court that it was Captain Sutton that was ſent with the firſt order, and the Milford with the ſecond.

*Q.* At what hour in the evening did the Formidable get into her ſtation in the line?

*A.* I have already ſaid, that I did not ſee the Formidable bear away to get into her ſtation, nor make any attempt towards it the whole day. After it was remarked that the Formidable did not obey the ſignal, I watched her motions with particular anxiety; I never was more attentive to any ſhip, nor ever watched any one with ſo much anxiety and concern. I looked at her ſometimes with the glaſs, and ſometimes without it; and I never ſaw her wear away, nor make the ſmalleſt attempt towards it. After the Admiral had given over the intention of renewing the engagement, I was not ſo particular in watching her, and after that time ſhe may have edged away,

away, but it muſt be between ſeven and eight o'clock, if ſhe did ſo at all, though I never ſaw it, nor heard of it. But I am ſure ſhe did not get into her ſtation while there was any light to ſee her.

*Q.* Did the Victory carry her diſtinguiſhing lights on the night of the 27th of July?

*A.* She did; and orders were given to put a candle into every ſocket of the lanterns, which is not uſual, and an additional lantern at the bowſprit and the whale-end.

*Q.* Did you ſee any diſtinguiſhing lights on board of the Formidable?

*A.* I ſaw nothing either of her or her lights after the day cloſed in.

*Q.* Were any ſignals, or other means made uſe of after ſeven o'clock, to make the Vice-Admiral of the Blue come down.

*A.* No—not that I recollect. At ſeven o'clock there were pendants for all the ſhips of his diviſion, except himſelf, to come down.

*Q.* In what poſition was the Vice-Admiral of the Blue, at daybreak, on the morning of the 28th?

*A.* I do not recollect; at daybreak on the 28th my attention was taken up with looking at the three French ſhips to leeward, and in looking out for proper ſhips to ſend to chaſe them, as the Admiral had directed.

*Q.* Did you ſee diſtinguiſhing lights on board the Vice-Admiral of the Red in the night of the 27th?

*A.* Yes, I did ſoon after the day cloſed in; but after that I did not pay much attention to her.

*Q.* Was not the Victory a good deal damaged in the engagement?

*A.* Her maſts and yards wounded, our rigging a good deal cut, and ſome few ſhot in the hull; one of the lower deck ports much ſhattered.

*Q.* How long was it before ſhe was ready to get into action again?

*A.* We would have been able to have gone into action again immediately after we wore at two o'clock,

had

had the other ſhips been ready to join us; but as they were not, and as we had a good many ſhot in our main-top-ſail, below the loweſt reefs, we took that opportunity of unbending a new main-top-ſail, which otherwiſe we ſhould not have done, and which indeed the Admiral objected to at firſt for fear of its loſing time; but when he ſaw that it would not, he agreed to it.

*Q.* When the Victory wore to the ſouthward, with the ſignal for the line flying, was it not meant by that evolution to collect the ſhips, and form a regular line before you engaged again?

*A.* It was certainly intended thereby to collect the ſhips; it was the propereſt of all ſignals for that purpoſe, becauſe it commands the prompteſt obedience; but notwithſtanding that ſignal, the Admiral had it in his power to bear away.

*Q.* When the Victory wore to the ſouthward, and edged away from the wind, how long did ſhe ſtand upon that tack before ſhe hauled her wind?

*A.* I think it was about five o'clock before we hauled upon the wind; the intention of bearing away from the wind, was to get between the French and thoſe ſhips that lay to leeward, without having wore, and which for that reaſon we concluded to be diſabled.

*Q.* What ſail was the Victory under, and did ſhe increaſe her diſtance, and if ſhe did, how much, in conſequence of her bearing away to join thoſe ſhips to leeward?

*A.* The Formidable was altering her diſtance continually from the Victory. When the Victory bore away from the wind, ſhe left the wake of the Formidable, and the Formidable conſequently increaſed her diſtance to leeward: I cannot aſcertain the diſtance. But when Sir Robert Harland made ſail to get a-head, he paſſed the centre between the Formidable and the Victory, a full mile from the latter, and conſiderably to leeward of the Formidable.

*Q.* Did the Victory increaſe her diſtance from or near the Formidable, after ſhe hauled her wind?

*A.* I do not think there was ſuch an alteration as to be perceptible.

*Q.* Were

Q. Were all or any of the ſhips of the Blue diviſion in the evening of the 27th, in the wake of the Victory?

*A.* After the pendants were thrown out, ſeveral of them bore down, and ſome of them were very near in a line at eight o'clock.

Q. When the Victory was at the ſtarboard tack with the ſignal for the line flying, did ſhe carry ſuch ſail as to prevent the Formidable from getting into her ſtation.

*A.* The Victory had her foreſail and double reefed topſails, and we never went more than three, or three and a half knots; but I have already ſaid, that the Formidable did not make any attempt to come down, that I ſaw.

Q. Was the Formidable left quite alone when thoſe ſhips bore away in conſequence of thoſe ſignals?

*A.* No. There was one ſhip did not bear away, and another was on the contrary tack.

Q. What courſe muſt the Formidable have ſteered to have got into her ſtation?

*A.* She was about four points abaft our weather beam, and as her ſtation was conſiderably a-ſtern, ſhe muſt have bore away conſiderably from the wind.

Q. Did Admiral Keppel expreſs much uneaſineſs and diſappointment to you on the Vice-Admiral's not coming down; and what were his expreſſions?

*A.* He expreſſed much uneaſineſs, diſappointment, and diſpleaſure; but the converſation was much too complex for me to remember; but I recollect he once ſaid, on the quarter deck, with more warmth than is uſual to him, that he could not have believed he ſhould have been ſo ill obeyed.

Q. What ſail did the Victory carry during the night?

*A.* We took in the 3d. reef of the topſails at eight o'clock, and we furled our mizen topſail, that the light at our mizen might be ſeen. I am not ſure whether the mizen topſail was hoiſted or not all night; our foreſail, and perhaps our mizen ſtay-ſail were out. I remember the French reefing when we began to reef. I do not remember the rate of our ſailing; we went very little through the water. Q. What

Q. What ſail had the Formidable ſet after five o'clock till dark.

*A.* After we paſſed her on the larboard tack, her fore-top-ſail was unbent, and I never ſaw it bent the whole afternoon. I cannot ſay what ſail ſhe was under. I can ſay further, that I ſaw with my glaſs, the ſtudding-ſail booms were on the top-ſail yards; and I fancied that they were going to bend their fore-top-ſail and edge down.

Q. When the Engliſh rear came out of action, did not the Formidable and other ſhips wear and lay their heads to the enemy? If ſo, how long did they continue ſo.

*A.* I never ſaw the Formidable till a little before ſhe paſſed the Victory on the ſtarboard tack. I never ſaw her wear to the northward, nor ever heard of it, till Sir Hugh Palliſer told me ſo himſelf in the houſe of Admiral Keppel in London; and I did not altogether give credit to it, for I could hardly believe that any man, after having wore with his head to the enemy, would have preſumed to have wore away again, without being ordered ſo to do, eſpecially when his Admiral was ſtanding toward him; and I believe the Vice-Admiral will recollect that I expreſſed myſelf ſo to him when he told me.

Q. How many ſhips were ordered to chaſe in the morning of the 27th?

*A.* I think ſix or ſeven. All thoſe that I obſerved under eaſy ſail.

Q. Do you think there was day light enough after eight o'clock to have renewed the battle?

*A.* There certainly was daylight enough to have bore down, but night muſt have ſet in before we could have joined battle with them; but that is mere matter of opinion

Q. Do you know of any thing further concerning the conduct of Sir Hugh Palliſer on the 27th or 28th of July, which you have not already informed the Court of, and which you think it neceſſary for the Court to be acquainted with?

*A.* I

*A.* I ſaid before, that I could not undertake to give a narrative of the Formidable's proceedings. Whatever ſpecific queſtion the Court may think proper to aſk me, I am ready to anſwer it; but I do not chuſe to anſwer that general queſtion. The time is ſo long paſt, that I cannot take upon me to relate to the Court all the particulars of a tranſaction ſo complex. If any ſpecific queſtion is aſked, I will certainly anſwer it to the beſt of my recollection.

Admiral Digby ſaid he did not conceive the queſtion.

He anſwered, he perfectly underſtood the queſtion, but he could not anſwer it.

The evidence for the Crown was here ſtopped.

The Rear-Admiral ſaid he wiſhed to have his evidence read over to him, for, from the manner in which the minutes were taken down, he knew there were ſome errors in it, and ſome incoherencies, which he wiſhed to correct; but, on a little diſpute, he gave up the point.

CROSS-EXAMINATION BY SIR H. PALLISER.

*Q.* What do you underſtand was the order of ſailing in force at one in the morning of the 27th of July?

*A.* We were in the morning of the the 27th, on the larboard tack, conſequently the Vice-Admiral of the Blue ought to have been on the larboard-quarter, and the Vice-Admiral of the Red on the ſtarboard-quarter of the Victory.

*Q.* Do you remember what was the laſt time that the fleet was formed in a line before the engagement, and upon what tack?

*A.* I think the ſecond day after our ſeeing the enemy in the afternoon was the laſt time; but I may be miſtaken.

*Q.* Does the Admiral remember that when the line was formed that afternoon, the fleet was tacked by ſignal, and the ſignal for the line hauled down.

*A.* I do not. The trials being confined to the 27th and 28th days of July, I did not take pains to call back to my recollection the proceedings of any other day.

day. But I am apt to think it is as the Vice-Admiral ſtates it.

*Q.* Do you think that when a ſignal is made for the whole fleet to tack together, that the reſpective diviſions are enjoined to preſerve their ſituations?

*A.* The ſignal for the line might be hauled down, as the Admiral ſays. I think it certainly is the beſt way; and there was an order to that effect given on the ſecond cruize, to prevent the confuſion of the running through each other; but there was no ſuch order then.

If it was as the Vice-Admiral ſtates it, he muſt have been wide upon the Admiral's weather quarter.

*Q.* Do you recollect that the laſt time that we tacked before the 27th, did we not tack all together by ſignal? *A.* I do not recollect.

*Q.* When a ſignal is made for a fleet to tack all together, with an enemy in ſight, is it not expected that the diviſion ſhall preſerve their reſpective ſtations?

A little diſpute aroſe on this, and the above queſtion was given up for the following by Admiral Digby.

*Q.* Does Admiral Campbell mean that Sir Hugh Palliſer ought to have been on the Victory's larboard quarter on the morning of the 27th?

*A.* I think that ſailing order can have very little effect towards the government of a fleet when the enemy is in ſight, who is avoiding you. We were in chaſe of the enemy, and it was the firſt duty of the Vice-Admiral of the Blue, and the Vice-Admiral of the Red, to get as much to windward as the Victory was. And if Sir Hugh Palliſer in the Formidable, could get upon the weather quarter of the Victory, it was his duty to do ſo.

*Q.* Was not the Vice-Admiral of the Red on the weather quarter of the Admiral in the morning of the 27th?

*A.* He was.

*Q.* Was he not placed there by the ſignal for tacking, and was I not hereby placed in a contrary ſituation?

*A.* No, I do not think ſo. The ſignal had been made

two

two days before, and could have no effect upon the then order. The Vice-Admiral of the Red was wide of the Victory, and there was very good room for the Vice of the Blue; but I have all along ſaid that it was not expected that after being ſo far to leeward the night before, he ſhould be to windward that morning; but it was expected that he ſhould not be fallen farther to leeward, which he was ſo far as ſurprized every body, and gave us reaſon to think that the diviſion would be uſeleſs.

*Q.* When the Victory had paſſed the enemy, and had wore back again toward them, did ſhe not ſteer all that time directly for the Formidable?

*A.* I have already ſaid I did not ſee the Formidable till we nearly met; but we muſt have done ſo I think as we were upon contrary tacks. She was a little upon the Victory's lee-bow.

*Q.* What ſail did the Victory carry all the afternoon?

*A.* I have already ſaid under double-reefed topſail and fore-ſails.

*Q.* Were the mizen and mizen-ſtay-ſail up?

*A.* The mizen was not up when the ſignal for the line was flying; and the mizen-ſtay-ſail I think could not be out, becauſe we were going from a wind.

*Q.* Did the Victory lie-to any part of that afternoon? *A.* No, no part of it.

*Q.* Why was the firſt ſignal for the ſhips to windward to wear down, which you ſay was up ſo ſhort a time, ſo ſoon hauled down?

*A.* I did not ſay any ſuch thing; I ſaid that the ſignal for the line was hauled down for a few minutes, to ſhew the blue flag at the mizen-peak more diſtinctly. The ſignal for the line, however, was down but ten minutes, and then it was hoiſted again, and the blue flag hoiſted under it. Thoſe things made ſo great an impreſſion upon me, that I can never forget them, while I remember any thing.

*Q.* Was the blue flag hoiſted immediately under the ſignal for the line?

*A.* They were not hoiſted by the ſame haulyards, and, conſequently, they were not hoiſted together; but it was hoiſted a few minutes after.

*Q.* Do you know that the Formidable, and the ſhips of my diviſion, were the laſt that came out of action?

*A.* Yes. All but one that was a-head of the Victory.

*Q.* Do you not know that they were the ſhips that ſuffered moſt?

*A.* I did not know ſo at the time; but I have underſtood ſo ſince the unhappy diſputes that gave riſe to the Courts-Martial.

The Vice-Admiral ſaid he had no more queſtions to aſk; and the Rear-Admiral retired, after being told that his attendance was not further neceſſary.

THE HON. CAPTAIN BAYLE WALSINGHAM called.

*Preſident.* What diviſion did you belong to on the 27th of July? *A.* The Admiral's.

*Q.* Did it appear to you that the Vice-Admiral of the Blue did all that he could to bring his diviſion into action?

*A.* I paid very little attention to the Formidable till ſhe came into action.

*Q.* Did the Vice-Admiral behave as became an officer of his rank in the action?

*A.* He did, in coming in with ſpirit, and keeping up a regular fire.

*Q.* What time did the Red diviſion quit the rear on the ſtarboard tack, and go into his ſtation a-head?

*A.* A little paſt five o'clock, as near as I can recollect.

*Q.* Where was the Thunderer, with reſpect to the Victory at that time? *A.* A-head.

*Q.* At what time did the Red diviſion get into its ſtation a-head?

*A.* Some little time after they paſſed me.

*Q.* What was the poſition of the Blue diviſion with reſpect to the Victory?

*A.* With

*A.* With reſpect to my ſhip, they were to windward on the ſtarboard quarter; the diſtance increaſed by the Vice-Admiral keeping his wind as we ſtood on.

*Q.* At what time did you firſt ſee the ſignal for the line, and how long did it fly?

*A.* It was hoiſted about two o'clock; and I may ſay it was flying the whole afternoon. It was ſo at night.

*Q.* Was the ſignal for the line repeated, and by whom?

*A.* It was repeated by the Arethuſa.

*Q.* Was the ſignal repeated by the two Vice-Admirals?

*A.* To the beſt of my recollection, it was repeated by the Vice-Admiral of the Red; but it was not repeated by the Vice-Admiral of the Blue.

*Q.* Were any other general ſignals made on board the Victory till dark, and were they repeated, and by whom?

*A.* The ſignal for ſhips to windward to come into his wake was repeated by the Vice-Admiral of the Blue.

*Q.* Did the Vice-Admiral of the Blue come into his ſtation in conſequence of theſe ſignals?

*A. No.*

*Q.* Did you ſee any impediment to his doing it, and what were they?

*A.* I ſaw none.

*Q.* Did you ſee the Formidable's fore-top-ſail unbent?

*A.* Yes; for ſome hours.

*Q.* Did the Vice-Admiral of the Blue make any viſible efforts to come into his ſtation, by making ſail, or otherwiſe?

*A.* None that I ſaw; I cannot recollect what ſail he had ſet.

*Q.* From the poſition of the fleet between five and ſeven o'clock, do you think it was the Admiral's intention to renew the attack in the afternoon?

*A.* It was my firm opinion; and my hands were never from their quarters.

*Q.* What do you think were the Admiral's reaſons for not re-attacking the enemy?

*A.* Becauſe he was not ſupported by the Vice-Admiral of the Blue.

*Q.* Did the Vice-Admiral of the Blue make any ſignals of diſtreſs in the afternoon, or to ſpeak to the Admiral?

*A.* None that I ſaw.

*Q.* Did you ſee another fore-top-ſail bent on board the Formidable before the cloſe of the evening?

*A.* I do not recollect that I did.

*Q.* How long was the Vice-Admiral of the Blue out of action before the Admiral made the ſignal for the line of battle?

*A.* I do not recollect.

*Q.* Do you know of any other reprehenſible circumſtance in the conduct of Sir Hugh Palliſer?

*A.* I know of nothing elſe but his diſobedience of ſignals.

CROSS-EXAMINATION. BY SIR HUGH PALLISER.

*Q.* Do you recollect taking notice of the Formidable after you came out of action, and while ſhe remained in it?

*A.* It was in conſequence of the obſervation I then made, that I have ſaid the Formidable behaved with ſpirit in coming into action, and keeping up a warm and conſtant fire.

*Q.* Had I not the favour of a viſit from you, within a day or two after the action?

*A.* Yes, with Lord Mulgrave.

*Q.* Do you recollect that on that, and other occaſions, you was pleaſed to make many compliments on my behaviour?

*A.* Yes; I complimented you on your behaviour in the action.

*Court.* If you did not ſee what ſail the Formidable had ſet, how do you know that ſhe made no efforts to come into the line? *A.* Becauſe

*A.* Becauſe ſhe was to windward, and ſhe did not bear down in obedience to the ſignals.

*At three o'clock the Court adjourned.*

SIXTH DAY, SATURDAY APRIL 17.

At ten o'clock the Court aſſembled, and Admiral Campbell requeſted leave to come up to the Bar, and correct a trifling miſtake. Sir Hugh Palliſer at firſt had objections to it, but when Sir Chaloner Ogle explained to him what it was, he conſented, and Admiral Campbell informed the Court, that when he was aſked at what time the centre diviſion was connected, he had anſwered he believed about five; but he had forgot to mention that the Vengeance was a-ſtern conſiderably ſo, but not ſo much as to be uſeleſs in caſe the Admiral had found it practicable to go down to re-attack the enemy. The Court did not think it neceſſary to make any minute of this.

CAPTAIN FAULKNER CALLED IN AND SWORN.

*J. Adv.* You will give an account to the Court of the ſituation and proceedings of the Vice-Admiral of the Blue, from daylight in the morning of the 27th of July till he came into action.

*A.* He was between the cheſs-tree and the lee-beam of the Victory, with his main-ſail up, between two and three miles to leeward. All his ſhips almoſt, except the Ocean, had their main-ſails up. About ſix o'clock ſignals were made for ſix or ſeven ſhips of the Vice-Admiral of the Blue's diviſion to chaſe to windward, which was immediately complied with. Some time after the Vice-Admiral himſelf made ſail, and theſe ſhips ſtretched a-head.

*Q.* Did it appear to you that Sir Hugh Palliſer on that morning did all that he could to bring his ſhips into action?

*A.* I have already ſaid that he made ſail, which was all that was in his power. I did not ſee the Vice-Admiral in the action, my attention was taken up with my own ſhip; and after paſſing the rear, orders being

given to wear by the Admiral, it was my duty to prepare accordingly.

*Q.* Did you expect the van to come into action at the time it did?

*A.* I did not. When we tacked, I did not conceive that the van could have fetched the French. There were ſeveral hazes that morning, and ſquals that frequently made us loſe ſight of the two fleets, and of the different parts of our own fleet, ſo that I cannot ſpeak with preciſion on this point.

*Q.* To your knowledge did the Admiral expect it?

*A.* I am ſure he did not.

*Q.* Did you ſee the Formidable immediately after ſhe came out of action, and what was her poſition in reſpect to the Victory?

*A.* I ſaw her ſoon after. We paſſed her to windward; we were on the larboard tack, and ſhe was on the ſtarboard.

*Q.* Were any ſignals made by Admiral Keppel, in the Victory, after the rear had paſſed the enemy.

*A.* There were, the firſt ſignal was to wear, and after we had wore, the ſignal for the line was hoiſted. The firſt was about a quarter before two; the ſecond near two o'clock.

*Q.* Did the Formidable repeat thoſe ſignals?

*A. I am ſure ſhe did not.*

*Q.* How long did the Victory continue on the larboard tack?

*A.* Till near three o'clock.

*Q.* What was the ſituation of the Formidable, and did ſhe obey thoſe ſignals while on the larboard tack?

*A. No ſhe did not wear after the Victory.*

*Q.* Could the Formidable ſee the ſignals for the line?

*A. Moſt undoubtedly.*

*Q.* Was it repeated by the Arethuſa? *A. Yes.*

*Q.* Could the Formidable ſee it on board the Arethuſa. *A. Yes.*

*Q.* What time did the Victory wear from the larboard to the ſtarboard tack; and was it by ſignal, and repeated?

*A.* She

*A.* She wore by ſignal, and it was repeated by the frigate.

*Q.* Were any other general ſignals made, and what were they till dark?

*A.* The ſignal for the line was hauled down about a quarter before four, and the ſignal to bear down into the Admiral's wake put into its place; and ſoon after the latter was replaced; I ſay replaced, becauſe we all know they are both on the mizen-peak. It flew till near four o'clock, when it was hauled down, and the ſignal for the line of battle a-head, was hoiſted again. A little before five, the ſignal for the Fox was thrown out. (He was told that particular ſignals were not wanted.) Between four and five the ſignal for bearing down was hoiſted, under the ſignal for the line of battle. (He here requeſted leave to look at his minutes.) I do not recollect any other general ſignal. Theſe ſignals were kept flying till dark.

*Q.* Did the Formidable repeat the ſignal for ſhips to come into the Admiral's wake?

*A.* The Formidable repeated the ſignal for ſhips to bear down, as well as the Arethuſa?

*Q.* Was the ſignal for the line repeated by the Vice-Admiral?

*A. It was not;* but by the Arethuſa *inſtantly.*

*Q.* Do you remember the Fox frigate being called to the Admiral, and for what?

*A.* The ſignal was made for the Milford and Fox, a little before five; but I did not hear what orders the latter received.

*Q.* Did it appear to you that the Fox frigate joined the Formidable, and how ſoon?

*A.* I ſaw her immediately haul her main-ſail and top-gallants, carry a preſs of ſail, and keep her wind on the larboard; but I cannot ſay what time ſhe joined the Formidable. The ſignals were made for the frigates a little before five, and they were not out more than twenty minutes.

Q. Did the Fox fetch the Formidable without making aboard?

*A.* It was impoſſible for her to fetch the Formidable without making aboard, becauſe I ſaw the Formidable broad open to windward of her.

Q. When the Fox left the Victory, was not the latter cloſe hauled upon a wind?

*A.* When the Victory firſt wore, about ſeven minutes paſt three, ſhe did not keep her wind, but edged away, to ſuccour ſome ſhips to leeward. By five o'clock, I think, ſhe had come to a wind again.

Q. How far was the Formidable from the Victory at that time?

*A.* Between two or three miles.

Q. Did the Formidable bear down, after the Fox was ſent to her?

*A. No.*

Q. What poſition was the Formidable in from the Fox and Victory then?

*A.* Between two and three points abaft the weather-beam.

Q. Did Sir Hugh Palliſer, by ſignal or otherwiſe, inform the Admiral of his incapacity to obey theſe ſignals and orders?

*A. I ſaw no other ſignal made on board the Formidable, but the ſignal to bear down into the Admiral's wake; nor was there any meſſage received on board the Victory.*

Q. Did you perceive any diſability in the Formidable to obey thoſe ſignals?

*A.* The maſts and yards were all ſtanding; none ſhot out; none carried away that I ſaw.

Q. What ſail was the Formidable under at the time the Fox was ſent to her?

*A.* Her top-ſail was unbent, her courſes, main and mizen-top-ſails ſet; her fore-top-ſail was unbent. I cannot ſpeak with preciſion.

Q. Do you know that the Vice-Admiral of the Blue could, or could not, obey the ſignals that were made, and that nothing prevented him?

*A.* I

*A.* I know that he was in the wind's eye of his ſtation, and I ſaw no external appearance that hindered him.

*Q.* Was not Captain Marſhall ordered to come on board the Victory immediately before ſhe wore, and what orders did he receive ?

*A.* He came on board, but I know not what orders he received.

*Q.* When the Admiral wore to the ſtarboard tack, ſtanding to ſouthward, what number of ſhips was formed in the centre diviſion at ſix o'clock ?

*A.* The greateſt part of the diviſion: I am not ſure that they were all in their ſtations; the Vengeance was rather too far a-ſtern.

*Q.* What was the poſition of the Red diviſion at that hour ?

*A.* They had nearly got into their ſtations a-head of the Admiral.

*Q.* Was the enemy then formed in a regular line of battle, and how did their headmoſt ſhip bear from the Victory ?

*A.* They were forming, and many of them were formed, but there bearing was altering every minute, becauſe they were going faſter than the Victory; the poſition was on the lee quarter at that time.

*Q.* What was the poſition of the Vice-Admiral of the Blue at that time ?

*A.* Abaft of the Victory's weather beam, the ſame as ſhe had been before.

*Q.* Did the Formidable continue to keep cloſe to her wind after the Fox went to her ?

*A.* I never ſaw the Formidable bear down at all. She continued to keep her wind, and preſerve the ſame ſituation.

*Q.* Was the Britiſh fleet, at any time, or at what time of the evening, in a ſituation to have re-attacked the French fleet, if the Vice-Admiral of the Blue had come down and taken his ſtation in the line on the evening of the 27th of July ?

*A.* I think they were at ſix o'clock or a little after.

*Capt.*

*Captain Peyton.* Were the Britiſh and French fleets reſpectively in ſuch a ſituation as would have admitted of an attack on the ſide of the Britiſh fleet ſo ſoon as you have mentioned?

*A.* I anſwer that queſtion by ſaying, that the French fleet was to the leeward of the Britiſh fleet; and it is my opinion, that a fleet to the windward can always attack a fleet to leeward, provided the latter will ſtay for them.

*Q.* What number of ſhips had the Vice-Admiral of the Blue with him at that time?

*A.* I think his whole diviſion was with him.

*Q.* Did it appear to you that the diſobedience of the Vice-Admiral of the Blue, to the ſignals which have been mentioned, was the reaſon that the attack was not renewed?

*A.* I know of no other.

*Q.* Did the Admiral aſſign any reaſon for placing the Red diviſion in the rear, and what time did it take place?

*A.* The Admiral did not aſſign any reaſon to me, but the Red diviſion were not directly a-ſtern, that is in the wake of the Victory, about five o'clock.

*Q.* At what hour did the Formidable come into her ſtation in the evening of 27th?

*A.* She never came into her ſtation at all on the 27th, after the battle.

*Q.* Did the Victory carry her diſtinguiſhing lights on the evening of the 27th?

*A.* She did, and I took care, as Captain of the ſhip, that they ſhould be good, and the lanterns clear, with the addition of a very good one at the bowſprit end.

*Q.* Did you ſee thoſe on board the Vice-Admiral of the Red, and any on board the Formidable that night?

*A.* I ſaw the diſtinguiſhing lights on board of the Vice-Admiral of the Red, but I ſaw no diſtinguiſhing lights on board the Formidable, nor any lights at all on board her after dark.

*Q.* In what poſition was the Vice-Admiral of the Blue at the break of day, on the 28th, with reſpect to the Victory?

*Q.* At

*A.* I did not ſee him at break of day; but when we bore away for the three ſhips under the fleet lee, the Vice-Admiral of the Blue was narrow on the Victory's ſtarboard quarter about a league diſtant. We bore away about four o'clock.

*Q.* If the Vice-Admiral of the Blue had been in his ſtation could you have ſeen his diſtinguiſhing lights?

*A.* It would have been impoſſible for the Victory to have ſeen them.

*Q.* Was not the Victory a good deal damaged on the evening of the 27th?

*A.* The Victory, received her ſhare of damage with the reſt of fleet.

*Q.* How long was it before ſhe was fit for action?

*A.* By four o'clock, or before, ſhe was fit to go any where as ſoon as her main-top-ſail was ſhifted.

*Q.* When the Victory wore to the ſouthward, with the ſignal for the line flying, was it not meant by that evolution to form the line of battle before the engagement was renewed?

*A.* Moſt undoubtedly.

*Q.* When the Victory wore to the ſouthward, and edged away from the wind, how long did ſhe ſtand from the wind upon that tack before ſhe hauled it again?

*A.* I have before ſaid, that I am not preciſe as to time, but I think about five.

*Q.* What ſail was ſhe under, and did ſhe increaſe her diſtance from the Formidable?

*A.* The Victory was under the fore-ſail and three double-reefed top-ſails, and I think we increaſed our diſtance from the Formidable. We left her ſtill to windward.

*Q.* When the Victory hauled her wind what was the poſition of the Red diviſion?

*A.* They were getting a-head into their ſtation.

*Q.* Did you increaſe or near the diſtance of the Formidable, after the Victory hauled her wind?

*A.* She kept them in the ſame place as nearly as poſſible.

*Q.* At

*Q.* At what hour were the particular ſhips' ſignals made for the Blue diviſion to bear down into the Admiral's wake?

*A.* About ſeven o'clock.

*Q.* Were all, or any part of the Blue diviſion in the line in the courſe of the evening?

*A.* I think the Elizabeth and the Ocean were down to leeward, near the Admiral's wake.

*Q.* When the Victory was on the ſtarboard tack, with the ſignal for the line of battle flying, did ſhe make ſo much ſail as to prevent the Vice Admiral of the Blue from coming into his ſtation?

*A.* No, by no means.

*Q.* Did Admiral Keppel expreſs any uneaſineſs, or diſappointment, at the Vice-Admiral's not coming down?

*A.* He did expreſs great uneaſineſs, and aſked me more than once, what I thought they could be about? I anſwered, I could not for my ſoul conceive.

*Q.* Did the Formidable make any ſignals of diſtreſs all the afternoon?

*A.* No, none.

(The Priſoner owned he made no ſignals.)

*Q.* What ſail did the Victory carry on the night of the 27th, and what rate went ſhe at?

*A.* She had treble-reefed top-ſails; her fore-ſail and her mizen-ſail were half out, half in; her mizen-ſtay-ſail was certainly not ſet.

*Q.* Was the mizen out in the evening, when the ſignal was flying?

*A.* No.

*Q.* At what rate did ſhe go.

*A.* She went ſometimes under two knots, and ſometimes two knots.

*Q.* Did the Vice-Admiral of the Blue, with ſome ſhips of his diviſion, after he paſſed the rear of the enemy, wear and lay his head to the enemy?

*A.* I never ſaw the Vice-Admiral of the Blue with his head towards the enemy after he paſſed the line.

*Q.* As it appeared that the French fleet formed their line,

line, and ranged up in a parallel line with our fleet, was it not in their power to have renewed the engagement?

*A.* It undoubtedly was in their power, in the ſituation they were in ſoon after the action; for when the French fleet firſt wore, their van had it in their power either to have fetched or weathered the Victory.

*Withdrew.*

Mr. ROGERS, SECRETARY TO ADMIRAL KEPPEL, CALLED IN AND SWORN.

*Q.* Did you attend Admiral Keppel on the 27th of July to take notes for him?

*A.* I did.

*Q.* Did you always do ſo?

*A.* It has been uſual for me to do ſo ever ſince I had the honour to attend the Admiral.

*Q.* Give an account of the principal or general ſignals that were made on that day?

*A.* The firſt ſignal that I noted was to tack all together at ten in the morning.

*Q.* The next?

*A.* At twenty minutes paſt eleven, the ſhips a-head beginning to fire on the French fleet, the Admiral immediately ordered the ſignal for battle. Soon after one, the ſignal for wearing was made, but the Victory did not wear till a quarter before two. The ſignal for battle was hauled down about this time. At two the ſignal was made for the line of battle a-head. At ten minutes paſt three, the ſignal to wear; very ſoon after, the ſignal for ſhips to bear down into the Admiral's wake. At two minutes after five the ſignal for the ſhips to get into their ſtations. At ſeven o'clock many pendants were thrown out for the ſhips of the Vice-Admiral of the Blue's diviſion to obey the ſignals that were flying.

*Q.* Was there not a ſignal for the Fox to come within hail of the Victory?

*A.* There was.

*Q.* Do

*Q.* Do you remember the time?

*A.* There was ſuch a ſignal, but I have it not noted.

*Q.* Do you remember any orders that were ſent by the Fox?

*A.* I remember perfectly.

*Q.* What were they?

*A.* Captain Windſor was directed to go to the Vice-Admiral of the Blue, and deſire him to bear away into his ſtation in the line, for the Admiral waited for him to renew the action.

*Q.* Did you ſee the Fox range near the Formidable?

*A.* I did. I ſaw her ſome time afterwards on the Formidable's lee-quarter.

*Q.* At what time?

*A.* In about half an hour after ſhe left the Victory, which was about five.

*Q.* Did the Vice-Admiral of the Blue bear down in conſequence of theſe orders?

*A. No.*

*Q.* How was the Vice Admiral of the Blue ſituated at that time?

*A.* On the Victory's weather-quarter.

*Q.* Can you judge of the diſtance?

*A.* I would not wiſh to ſpeak as to diſtance.

*Q.* Did you ever obſerve the ſignal for the line of battle a-head to be repeated on board the Formidable?

*A. No, I never did.*

*Q.* Was it flying on board the Victory from the time that ſhe wore to the ſouthward till dark?

*A.* I ſhould ſay it was, but I underſtand it was hauled down for ſome time, but I did not ſee it.

*Q.* Did you ſee any, and how many of the ſhips of the Vice-Admiral of the Blue's diviſion bear down in conſequence of the pendants being out?

*A.* Some of them did, but I cannot ſay how many, or what ſhips they were.

*Q.* Did you ſee the Arethuſa repeat the ſignals?

*A.* Yes. Nobody could be more punctual in that particular than Captain Marſhall.

*Q.* Did you ſee them repeated by the Formidable?

*A.* The

*A.* The only one I ſaw repeated by the Formidable was the blue flag at the mizen-peak and ſome pendants thrown out.

*Q.* Did you ſee the Formidable during the action?

*A.* I did not obſerve her.

*Q.* Did you take notice of the Formidable after the Victory came out of action?

*A.* I cannot ſay I did, enough to give any particular account of her.

*Q.* Was the Victory in ſuch a ſituation as to have ſeen the ſignal for the line of battle flying on board the Formidable?

*A.* Yes, certainly, as I looked to her with great attention.

*Q.* Was any other order or meſſage ſent to any part of the fleet on the day of action but what you have mentioned?

*A.* Yes, there were others.

*Q.* What were they?

*A.* A little before three o'clock, Captain Sutton, of the Proſerpine, was called on board to be ſent to the Vice-Admiral of the Red, to direct him, as he had the poſition to windward, to lead on the larboard tack; but before the Captain left the Victory, ſhe had wore to the ſouthward; he was then directed to order Sir Robert Harland to keep his then poſition a-ſtern. At three quarters paſt four, the Milford was ſent to Sir Robert Harland to lead a-head.

*Q.* How long was it after that before Sir Robert Harland paſſed the Victory?

*A.* I cannot ſay exactly, but he obeyed the order as ſoon as the ſhip could get to him, which was half an hour perhaps.

*Q.* Did you hear Admiral Keppel expreſs his diſpleaſure at the Vice-Admiral of the Blue's not bearing down into his wake agreeable to the ſignals?

*A.* The Admiral expreſſed great anxiety and diſappointment at the Vice-Admiral of the Blue's not coming down in obedience to the ſignals.

*Q.* Did you hear the Admiral ſay, that if he could have

have formed his line, he would have renewed the action?

*A.* I cannot ſay he made uſe of theſe expreſs words, but he made uſe of many expreſſions that left no doubt with any perſon on board the Victory of that being his intention.

*Withdrew.*

CAPTAIN MARSHALL, LATE OF THE ARETHUSA FRIGATE, CALLED IN AND SWORN.

*Judge Adv.* Were you appointed to repeat the ſignals on board the Victory, on the 27th of July?

*A.* I was.

*Q.* Give an account then of all ſignals made on the 27th of July, diſtinguiſhing the times when hoiſted, place where hoiſted, ſignification, and the time when hauled down?

*A.* I beg to refer to the minutes. Some doubt aroſe on this; Admiral Digby and Captain Peyton wiſhed him to ſpeak from his own knowledge. He ſaid it was totally impoſſible for him to ſpeak from his own knowledge ſo accurately to times, as to aſcertain them within a few minutes.—After ſome little altercation, he was permitted to conſult his minutes, and he proceeded to give the account.

The firſt ſignal was thirty minutes paſt ten, A. M. unions at the fore and mizen heads, one gun for the whole fleet to tack together; hauled down forty minutes paſt ten. Five minutes paſt eleven red flag, fore-top-maſt-head, one gun for the fleet to engage; hauled down twenty-ſix minutes paſt one. Two minutes paſt one, P. M. blue pendant, enſign ſtaff, for the fleet to wear; hauled down ten minutes paſt one; forty minutes paſt one, flag, union and blue, with the red croſs, mizen-peak with the union upwards; one gun for the fleet to form a line a-head a cable's length aſunder; hauled down twenty-three minutes paſt three; fifty minutes paſt one, flag ſtriped blue and white, mizen-top-maſt-head, for a particular ſhip to come within hail; hauled down at two. The

Proſerpine

Proſerpine and Arethuſa's ſignals thrown out at the ſame time. Fifty minutes paſt two, blue pendant, enſign ſtaff, for the fleet to wear. At three, yellow pendant, main-top-maſt head. Proſerpine's ſignal hauled down fifteen minutes paſt three. Twenty-four minutes paſt three, blue flag, mizen-peak for ſhips to windward to get into the Admiral's wake; hauled down thirty minutes paſt three. Thirty minutes paſt three, union and blue with red croſs, mizen-peak, for the fleet to form a line a-head a cable's length aſunder; hauled down at daylight next morning. Fifty minutes paſt three, yellow pendant, mizen-top-maſt head, the Milford's ſignal; at thirty-three minutes paſt four, hauled down: a white pendant hoiſted before a flag ſtriped blue and white, main-top-maſt head, the Duke's ſignal to make more ſail, who made more ſail in conſequence. Thirty-ſeven minutes paſt four, Spaniſh flag at the main-top-maſt head, obſerving ſhips out of their ſtation; not hauled down till dark. Fifty-ſix minutes paſt four, red pendant at the fore-top-maſt, Prince George's ſignal. Fifty-ſeven minutes paſt four, blue pendant, Bienfaiſant's ſignal. Thirty-two minutes paſt five, yellow pendant, Proſerpine's ſignal. Thirty-two minutes paſt five, yellow pendant, ſtarboard main-yard even, Fox's ſignal; not noted when hauled in. Ten minutes paſt ſix, blue flag at the enſign ſtaff, hoiſted by miſtake; in three minutes I diſcovered my miſtake, and thirteen minutes paſt ſix, blue flag, mizen-peak, under the ſignal for the line, for ſhips to windward to get into the Admiral's wake, flew till day-dawn. Thirty-ſix minutes paſt ſix, red pendant, larboard main-top-ſail yard-arm, Elizabeth's ſignal. Same time blue pendant, larboard main-top-ſail yard-arm, Terrible's ſignal. Same time, blue pendant, larboard fore-yard-arm, Centaur's ſignal. White pendant, larboard mizen-top-ſail yard-arm, America's ſignal. At the ſame time there were four or five blue pendants on board the Victory, but I had only two to repeat them with.

*Adjourned till Monday morning, ten o'clock.*

SEVENTH DAY. MONDAY, APRIL 19.

*At ten o'clock the Court was reſumed.*

*The evidence of Captain Marſhall continued.*

Q. Were all the ſignals you have given an account of repeated on board the Arethuſa?

*A.* They were, but I cannot aſcertain the exact minutes.

Q. Did you ſee the Formidable immediately after ſhe came out of the action, and what was her ſituation with reſpect to the Victory?

*A.* I did, ſhe was a-ſtern on the weather-quarter.

Q. Did the Formidable bear down into the line in conſequence of the ſignal which was made at forty minutes after one, and was not hauled down till twenty-three minutes paſt three?

*A.* You will pleaſe to obſerve the fleet were in that line. The Formidable was to leeward of the Victory when I wore under her weather-quarter.

*Admiral Digby.* Did you ſee the Formidable wear from larboard to the ſtarboard tack?

*A.* I did not.

Q. Did you ſee her repeat the ſignal for the line at forty minutes paſt one?

*A.* I did not.

Q. How long was the Formidable upon the larboard tack?

*A.* I cannot tell. I can tell nearly when I tacked upon her weather-quarter; the ſtriped blue and white at the mizen-top-maſt head, was made at fifty minutes paſt one, and I think my ſails were trimmed juſt as that ſignal was made, and we looked up for the Victory; the Victory was on the larboard tack at that time, and I was juſt under her lee-bow; while I was in ſtays I was hailed to come on board.

Q. What diſtance do you think the Formidable was from the Victory when they were both on the larboard tack?

*A.* I ſhould ſuppoſe not a mile; but it is ſo long ago that I cannot ſpeak preciſely to diſtance.

Q. In

*Q.* In what poſition was the Formidable when the ſignal was made twenty-four minutes paſt three, for ſhips to get into the Admiral's wake?

*A.* I cannot aſcertain that.

*Q.* Did the Formidable bear down in conſequence of that ſignal.

*A.* I have ſaid before, I cannot charge my memory.

*Cap. Peyton.* When you were on board the Victory, what orders did you receive?

*A.* No particular orders. I met Captain Sutton going from the Victory, and ſuppoſe that he received them.

*Q.* What was the poſition of the Formidable when the ſignal was made for the fleet to form the line a cable's length aſunder?

*A.* She muſt have been on the lee-bow of the Victory.

*Q.* Did ſhe obey that ſignal.

*A.* I did not ſee her obey it.

*Q.* Was ſhe in a poſition that ſhe could ſee the ſignal?

*A.* I ſhould ſuppoſe ſo, either from the Admiral or the repeating frigate, as I was ſo wide of the Admiral.

*Q.* Did ſhe repeat that ſignal?

*A.* I did not ſee her repeat it.

*Q.* Did you ſee the Fox join the Formidable in conſequence of her ſignal, and at what time?

*A.* It appears to have been repeated at thirty-two minutes paſt five. She uſually obeyed her ſignal.

*Q.* What diſtance do you think the Fox was from the Victory when the ſignal was out?

*A.* She was near the Arethuſa, who was near three miles before the Admiral's lee-beam; the diſtance I generally endeavoured to keep.

*Q.* Did you obſerve the time when the Fox cloſed with the Admiral's ſtern ſo as to be within hail?

*A.* I did not.

*Q.* Did you ſee the Fox afterwards join the Formidable and at what time?

*A.* I did not.

*Q* Did the Formidable bear down after the Fox was ſent to her?

*A.* I did not obſerve her bear down.

*Q.* In what poſition was the Vice-Admiral of the Blue, and the ſhips of his diviſion, at thirteen minutes paſt ſix, when the ſignal was made for ſhips to bear down into the Admiral's wake?

*A.* The Formidable appeared to be about two points on the Arethuſa's weather-quarter. There were two ſhips nearly in the Arethuſa's wake. I cannot aſcertain the diſtance. The Arethuſa was nearly on a wind.

*Q.* Was the Arethuſa then ſailing upon a wind?

*A.* Yes but we chiefly attended in keeping her ſtation.

*Q.* Did the Vice-Admiral of the Blue repeat the ſignal laſt mentioned?

*A.* I think he did. I ſaw the flag of the Blue.

*Q.* Did he, in the Formidable, and the other ſhips in his diviſion obey that ſignal?

*A.* I have ſaid before, I did not ſee him bear down, and I did not attend to other ſhips.

*Q.* Did the Formidable keep her wind cloſe, or did ſhe ſeem to edge down?

*A.* She did not appear to edge down, nor do I know that ſhe was cloſe to the wind.

*Q.* Did you ſee any diſability in the Formidable that prevented her from obeying thoſe ſignals, or any other circumſtance that tended thereto?

*A.* The Formidable's fore-top-ſail was unbent; but I do not recollect any thing more.

*Q.* Did you ſee Sir Robert Harland paſs a-head of the Victory to lead, and at what hour?

*A.* I do not know the hour.

*Q.* Was it before or after the laſt ſignal that you made?

*A.* I do not recollect.

*Q.* What number of ſhips were formed in the centre at ſix o'clock, when the Admiral was on the ſtarboard tack?

*A.* I paid very little attention to any other ſhip but the Victory. I did not think it a part of my duty, and I really cannot ſay what was the exact poſition of any other ſhips.

*Q.* What was the poſition of the French fleet with reſpect to the Engliſh at that time? *A.* They

*A.* They were ranged upon the larboard quarter five or ſix ſail but I cannot fix the exact poſition.

*Q.* At what hour did it appear to you the Formidable got into her ſtation in the evening?

*A.* I have before ſaid I did not obſerve her to bear down.

*Captain Peyton.* At what time did the van diviſion get into their ſtation in the line?

*A.* I have before obſerved I cannot be accurate.

*Q.* What time did you firſt ſee the Formidable on the ſtarboard tack, ſtanding to the ſouthward?

*A.* When I was on board the Victory.

*Q.* Do you know whether the Formidable wore to the ſouthward before the ſignal for that purpoſe was made?

*A.* I know not when ſhe wore.

*Admiral Digby.* How long after the Formidable paſſed the Victory, did the Victory wear to the ſouthward?

*A.* Not a long time I ſhould ſuppoſe. The ſignal was made while I was on board the Victory, and ſhe was beginning to wear when I left her. The Formidable paſſed the Victory on the ſtarboard tack, while the Victory was on the larboard.

*Q.* How long was you on board the Victory?

*A.* Near an hour.

*Preſident.* Was there any converſation paſſed between the Admirals Keppel, Campbell, and you, relative to the fleet during that time?

*A.* There were many obſervations made, naturally ſo, but I do not recollect them. I remember the Admiral's expreſſing his ſatisfaction at the manner in which the Arethuſa had repeated her ſignals.

*Q.* Did you ſee diſtinguiſhing lights on board the Victory in the night of the 27th of July?

*A.* Moſt aſſuredly I did.

*Q.* Did you ſee diſtinguiſhing lights on board the Vice-Admiral of the Red that night?

*A.* Yes, I did.

*Q.* Did you ſee any on board the Formidable?

*A.* I did not.

*Q.* Was your ſituation ſuch that you could have ſeen thoſe lights if there had been any?

*A.* My ſituation was ſuch, lying beſt part of the night on the Vice-Admiral of the Red's weather-quarter, that I could not have ſeen them if they had been out.

*Q.* Did you ſee the Vice-Admiral of the Blue at daybreak on the 28th?

*A.* I did not obſerve him on that morning at daybreak?

*Q.* When you did ſee him, what was his poſition?

*A.* I do not recollect when or where.

(Captain Marſhall begged leave to requeſt that an error that appeared in the minutes publiſhed by the Admiralty might be altered. They ſtated that he had ſaid that the Formidable had her top-ſails flying in the morning of the 27th, whereas ht had ſaid that the Formidable had *not* her top-ſails flying at that time.)

CROSS-EXAMINATION BY SIR H. PALLISER.

*Q.* When you obſerved the Formidable, did ſhe appear to be diſabled in her ſails and rigging?

*A.* Her ſails were ſhattered, as ſome other ſhips were: I cannot ſay as to the rigging at the diſtance I was from her.

*Q.* Did the Formidable wear to ſtand to the ſouthward when you was paſſing in your boat to the Victory?

*A.* I cannot poſitively ſay; it might be while I was ſtanding to the Victory; it might be while I was in the boat, or it might be while I was firſt on board the Victory.

*Q.* When you went on board the Victory, did the Arethuſa ſtay by the Victory?

*A.* Yes, I think ſhe did.

*Q.* Then did not the Arethuſa and Victory ſtand together towards the Formidable from the time you paſſed under the Victory's lee-bow, till the Formidable and Victory paſſed each other? *A.* I

*A.* I did not ſee the Formidable till ſhe paſſed the Victory's weather-beam, therefore I cannot know that the Victory and Arethuſa ſtood towards her.

*Q.* After the blue flag at the mizen-peak was hauled down at thirty minutes paſt three, was it ever hoiſted again till thirteen minutes paſt ſix.

*A.* I believe not.

*Sir H. Palliſer.* There is a paper of ſignals on the table which was kept on board the Arethuſa, and delivered to the Preſident of the late Court-Martial: it is material to me that it ſhould be authenticated, and I requeſt that Captain Marſhall may declare whether it is the ſame paper as he delivered to Sir Thomas Pye.

The paper was ſhewn to him, and he ſaid it was the ſame, but informed the Court, as he had done before, that there were ſome improprieties in it.

Captain Marſhall pointed out the errors, but ſaid they were the ground of the proſecution, and therefore they are not enumerated.

*Captain Duncan.* Was the Formidable in a ſituation in the evening of the 27th to ſee the ſeveral ſignals that were made?

The Priſoner admitted it.

*Q.* Did you ſee the Formidable during the action of the 27th.

*A.* I did not; I ſaw her as ſhe came out of action.

*Withdrew.*

MR. GRAHAM, LATE PURSER OF THE ARETHUSA, CALLED IN AND SWORN.

*Preſident.* Where was you ſtationed on board the Arethuſa on the 27th of July; and what was your duty during that action?

*A.* On the quarter-deck to take minutes of the ſignals.

*Q.* What is the paper in your hands?

*A.* It contains the minutes.

*Q.* Is it a paper of minutes of that day that you can ſwear to?

*A.* It is a copy of a copy of the original minutes which I took on the 27th of July.

*Q.* Is it a correct one?

*A.* Yes, it is.

*J. Adv.* Give an account of thoſe ſignals?

(Here Mr. Graham gave the ſame account of the ſignals that Captain Marſhall had done on his firſt day's examination.)

*Q.* Did you ſee the general ſignals repeated by the Vice-Admirals of the Red and Blue?

*A.* I did not; as I only looked at the Victory for the ſignals.

*Preſident.* Are thoſe ſignals in a paper in your hand a copy of a copy taken in your own hand writing?

*A.* Yes, they are.

CROSS-EXAMINATION BY SIR H. PALLISER.

*Q.* Is that copy a full, or a partial copy of the original? If there are any deficiencies, inform the Court thereof, and the reaſons.

*A.* I have already ſaid, I had no time annexed to the pendants which were let fly, which are the only deficiencies; and the reaſon is, that when I took the copy from the minutes, I took it for my particular ſatisfaction, and not for public inſpection, imagining that if I could give my friends an account of the general ſignals, the circumſtance of particular ſhips would be of no uſe to them. The reaſon for my wanting a private copy was, becauſe I had made a general book, which was kept conſtantly on the quarter-deck; and if any public references were to be made, they ſhould be made to that book.

*Withdrew.*

The Court were informed that Mr. Taſſey was a priſoner in France; but application had been made to the Secretary of State to procure his attendance.

THE HON. CAPT. WINDSOR, OF THE FOX FRIGATE, CALLED IN AND SWORN.

*Q.* Did you receive any orders from Admiral Keppel in the courſe of the afternoon of the 27th, and at what time?

*A.* I

*A.* I did, nearly about five.

*Q.* What were thoſe orders?

*A.* To ſtand to the Formidable, and inform Sir Hugh Palliſer that the Admiral only waited for him and his diviſion coming down into the line to renew the action.

*Q.* Did you commit thoſe orders to writing?

*A.* No.

*Q.* From whom did you receive them?

*A.* Admiral Keppel.

*Q.* Was it by hailing, or did you go on board?

*A.* By hailing.

*Q.* What time did you deliver thoſe orders to Sir Hugh Palliſer?

*A.* Almoſt half paſt five.

*Q.* Did you receive any anſwer?

*A.* Sir Hugh Palliſer anſwered, that he underſtood me perfectly well.

*Q.* Was the Fox to windward or to leeward of the Formidable when you received the anſwer?

*A.* To leeward.

*Q.* What diſtance was you from the Formidable when you delivered the order?

*A.* So cloſe that my ſails were becalmed by her.

*Q.* Was there any noiſe on board the Fox, ſo as to prevent the anſwer from being heard?

*A.* No.

*Q.* Was there any on board the Formidable at that time?

*A.* After I delivered the meſſage, the Formidable's company cheered the Fox, which when I had got to a ſufficient diſtance, I made the Fox's people return.

*Q.* Was the anſwer heard before the cheering?

*A.* It was.

*Q.* But was the cheering ſo immediately after the anſwer, that ſome part of it might not have been heard?

*A.* Certainly not.

*Q.* Did you keep cloſe on a wind when ſtanding from the Victory to the Formidable?

*A.* She

*A.* She was cloſe hauled on the larboard tack.

*Q.* Did ſhe fetch her when on that tack?

*A.* I could not fetch her upon the larboard tack within hail. I cannot ſay how near.

*Q.* Did you heave the log when you were paſſing from the Victory to the Formidable, and at what rate did you go?

*A.* I did not heave the log, but I think ſhe went about ſeven knots.

*Q.* How far did you ſtand beyond the Formidable on the larboard before you tacked?

*A.* I cannot ſay exactly, I think the whole time.

*Q.* What ſail was the Formidable under when you hailed her?

*A.* She was under her courſes. I think her fore-top-ſail was unbent; ſhe had hands in her tops, but I do not recollect any thing about her other ſails.

*Adm. Digby.* Was you called to the Victory by ſignal? *A.* I was.

*Q.* How far was you from the Victory when your ſignal was made?

*A.* I was upon her weather-beam about three quarters of a mile.

*Preſident.* Did you obſerve any diſability in the Formidable at that time to make more ſail?

*A.* I have ſaid her fore-top-ſail was unbent. I do not recollect any other circumſtance.

*Q.* How long was you within hail of the Formidable?

*A.* From the ſails being becalmed, I ſhould ſuppoſe between two and three minutes.

*Adm. Digby.* How did the Formidable bear from the Fox at the time you ſaw your ſignal to bear down to the Victory?

*A.* She was upon the weather-quarter, and at ſome diſtance, which I cannot aſcertain.

*Q.* After you had received an anſwer from the Vice-Admiral of the Blue, did you ſee any ſignals made on board the Formidable, and what were they?

*A.* I

*A.* I ſaw ſeveral pendants thrown out, but do not know what they were for.

*Court.* How ſoon were they ſo?

*A.* Almoſt immediately.

*Q.* When you was ſpeaking to the Formidable, was the ſignal for the line of battle flying on board her?

*A.* I did not ſee her have any ſignals on board.

*Q.* Did the Formidable, after you delivered the meſſage, edge away?

*A.* I did not perceive any alteration in her ſituation.

*Q.* Do you know of her being in the Victory's wake any time that evening?

*A.* Not that I ſaw.

*Preſident.* Was there any meſſage paſſed between the Formidable and Fox but what you have related?

*A.* None.

*Court.* Was you long enough within hail of the Formidable, for the Vice-Admiral to have ſignified his diſability to have come down?

*A.* I have already ſaid I was two or three minutes.

*Q.* From what part of the Formidable was the anſwer given to your meſſage?

*A.* I received the anſwer from Sir Hugh Palliſer, from the lower ſtern gallery.

*Q.* What ſail had the Victory ſet when you received the meſſage?

*A.* I think double-reefed top-ſails and fore-ſail.

*Q.* Was the Victory going from the wind, or by it at that time?

*A.* As near as I can judge, ſhe was cloſe hauled.

*Adm. Digby.* What became of the Fox after you delivered your meſſage, and did you attempt to return to the Victory?

*A.* Having no orders to return to the Admiral, I did not go down to the Victory, but run a-head to my ſtation, and there reefed my top-ſails.

*Q.* How long was you in going from the Formidable to your ſtation?

*A.* As near as I can recollect, between twenty-five and thirty minutes.

*Preſident.*

*Preſident.* How was the Vice-Admiral of the Red's diviſion ſituated with regard to the fleet when you hailed the Formidable?

*A.* A-head of the Admiral, I think, at ſome diſtance.

*Q.* Did you ſee diſtinguiſhing lights on board the Admiral's in the night of the 27th of July?

*A.* I ſaw them on board the Victory and Queen, but not on board the Formidable.

*Q.* Did you ſee the Formidable at daybreak in the morning of the 28th?

*A.* I cannot charge my memory in what ſituation ſhe was in?

*Q.* In going to your ſtation from the Formidable, did you go from the wind, or cloſe hauled?

*A.* I am pretty certain I was cloſe hauled.

*Q.* Was there any perſon in the ſtern-gallery with Sir Hugh Palliſer when you delivered the meſſage?

*A.* I did not ſee any perſon.

*Q.* Was the weather ſo quiet and ſtill that your meſſage could be diſtinctly heard?

*A.* My meſſage was certainly heard, or I could not have received ſo diſtinct an anſwer.

CROSS-EXAMINATION BY SIR H. PALLISER.

When you received your meſſage from the Victory, was you upon her weather or lee-quarter, or where?

*A.* The Fox was upon the lee-quarter of the Victory cloſe to her.

*Q.* How many ſhips were there then formed a-ſtern of the Victory?

*A.* I do not remember how many; there were certainly ſome.

*Q.* Can you name the ſhips that were next to the Victory? *A.* No, I cannot.

*Q.* When you left the Victory to go to the Formidable, did you wear or tack?

*A.* I wore.

*Q.* Did you weather the ſhips that were formed a-ſtern of the Victory?

*A.* I

*A.* I could not weather any of them.

*Q.* Then did you paſs to leeward and a-ſtern of them all before you tacked?

*A.* I have already ſaid the Fox was cloſe hauled on the larboard tack?

*Q.* When you ſpoke to the Formidable did you not ſee a number of men that were repairing the ſails in the main, fore, and mizen-ſhrouds, which might have the appearance of manning the ſhip, and occaſion the miſtake of cheering?

*A.* There were certainly men in the ſhrouds, but the anſwer I received from you was before I ſaw them.

*Q.* Did you obſerve any men in the tops?

*A.* There certainly were men in the tops and about the fore-top-ſail-yards as nearly as I can recollect.

*Withdrew; after being told, if further required he ſhould have previous notice given.*

LIEUTENANT ALBEMARLE BERTIE, LATE OF THE FOX, CALLED IN AND SWORN.

*Q.* Do you recollect the Fox being called to the Victory on the afternoon of the 27th of July.

*A.* Yes, I do.

*Q.* What was the meſſage that the Fox received when ſhe went to the Victory?

*A.* Admiral Keppel ordered us to go to Sir Hugh Palliſer, and acquaint him, that he only waited for him and his diviſion to renew the action.

*Q.* What time were theſe orders given?

*A.* I did not minute the time. I took it to be between five and ſix.

*Q.* How ſoon were theſe orders delivered to the Vice-Admiral of the Blue?

*A.* In half an hour Captain Windſor delivered it twice punctually, and then ordered me to do it. I did it alſo; and we were each of us anſwered from the Formidable's ſtern-gallery, "Sir, I underſtand you perfectly."

*Q.* What diſtance was you from the Formidable when you delivered the meſſage?

*A.* So

*A.* So near that anſwers could not be miſunderſtood; and when the words were delivered, the ſilence was ſo perfect on board the Fox, that a pin might be heard to fall.

*Q.* Was there any noiſe on board the Formidable that might prevent their hearing?

*A.* I think there was a noiſe, a conſiderable noiſe, but the anſwer we received, aſſured us the meſſage was heard.

*Q.* Was the anſwer received before you heard the cheering from the Formidable?

*A.* It was.

*Q.* Was there any cheering between the two ſhips?

*A.* There was.

*Q.* Who delivered the anſwer from the Formidable's ſtern-gallery?

*A.* I never had ſeen Sir Hugh Palliſer before, but I was told it was him.

*Q.* Did you keep cloſe on a wind upon ſtanding from the Victory to the Formidable?

*A.* Yes.

*Q.* How long were you in ſtanding from the Victory to the Formidable?

*A.* I believe about half an hour.

*Q.* What ſail was the Formidable under when you delivered the meſſage?

*A.* I do not know.

*Q.* Did the Vice-Admiral of the Blue ſet any ſail after you delivered the meſſage?

*A.* We ſhot a-head, and being under a preſs of ſail ourſelves, I did not attend to the Formidable.

*Q.* What ſituation did the Formidable appear to be in reſpect to her rigging and ſails when you delivered the meſſage?

*A.* There were hands in all her tops and upon her top-ſail yards; every body ſeemed to be employed repairing and refitting the damages the ſhip had received.

*Admiral Digby.* How far was you from the Victory when the ſignal was firſt made?

*A.* I

*A.* I believe a mile or two on the weather-quarter, but I do not ſpeak this with any certainty.

*Q.* After you had delivered your meſſage, did you ſee any ſignals made on board the Formidable?

*A.* There were I believe ſome ſignals made, but I do not recollect what they were.

*Q.* When you were ſpeaking to the Formidable, what ſignal had ſhe flying on board her?

*A.* None, that I recollect.

*Q.* Did the Formidable, after the meſſage, keep her wind or bear away?

*A.* I believe ſhe kept her wind.

*Q.* Do you know of the Formidable being in the Victory's wake any time that day?

*Q.* I do not think ſhe was.

*A.* Was there any meſſage or words paſſed between the Fox and Formidable other than you have related?

*A.* None, except the cheering.

*Q.* Was the Victory going from the wind, or by the wind, when you received the meſſage?

*A.* Cloſe by the wind.

*Q.* When you quitted the Formidable, how was the Vice-Admiral of the Red's diviſion ſituated?

*A.* I think they then were ſtriking a-head of the Admiral.

*Q.* Did you ſee the Formidable's lights on the night of the 27th?

*A.* We were a-head of her; conſequently we could not ſee them.

*Q.* How far were you from the Victory when the Fox reefed her top-ſails after ſpeaking to the Formidable?

*A.* Three or four miles.

CROSS-EXAMINATION BY SIR H. PALLISER.

*Q.* Did it appear to you that we were bending our fore-top-ſail at the time you ſay there were men upon the fore-top-ſail yards?

*A.* I believe they might be bending.

*Q.* Do

Q. Do you remember that you ſaid, on a former examination, that you thought we were bending the fore-top-ſail?

*A.* I believe I did; and I rather think now they were bending their fore-top-ſail.

This evidence was likewiſe aſked ſeveral other queſtions on his examination and croſs-examination, which he anſwered exactly as Captain Windſor had done. As that he ſaw the diſtinguiſhing lights on board the Victory and Queen, but being a-head of the Formidable, he could not ſee them on board of her, if they had been out. In the morning of the 28th, he expected to be a-head for chaſe, and he was buſy preparing for it, ſo that he did not take notice of the Vice-Admiral of the Blue. The Fox was in the lee-quarter of the Victory, when ſhe received the meſſage, and ſhe wore immediately within muſket ſhot of the French fleet, he ſuppoſed about a mile. He did not know how many ſhips there were then formed a-ſtern of the Victory, but he thought there were ſome which he weathered. He could not ſay what ſhip was next to the Victory; there were men, he ſaid, in every part of the Formidable employed in repairs, and they might perhaps be bending their fore-top-ſail at that time.

*Withdrew.—The Court was here cleared.*

CAPTAIN JERVAIS, LATE OF THE FOUDROYANT CALLED IN AND SWORN.

*The Order was read.*

*Cap. Jer.* May I be permitted to aſk if the printed minutes are looked upon as authentic.

*Court.* No. The original minutes are.

Q. Did you ſee the Formidable when ſhe came out of action?

*A.* I did not ſee her when ſhe came out of action.

Q. Did you ſee her on the larboard tack?

*A.* I did not.

Q. Were any ſignals made on board of the Victory when the Blue diviſion had paſſed the rear of the enemy?

*A.* The ſignal to wear was made. Q. Did

*Q.* Did you ſee the Formidable repeat that ſignal?

*A.* I did not.

*Q.* How long did the Victory continue on the larboard tack?

*A.* I cannot ſpeak to the time.

*Q.* What was the next ſignal after the ſignal for wearing?

*A.* The ſignal for the line of battle, immediately after the Victory's wearing.

*Q.* How ſoon after you came out of action did you ſee the Formidable, and what tack was ſhe then upon?

*A.* I did not ſee her till near three o'clock, and ſhe was then on the ſtarboard tack.

*Q.* What tack was the Victory on at that time?

*A.* The Victory was at that time upon the larboard tack. It was juſt before the Victory wore the ſecond time.

*Q.* Did it appear to you that the Formidable repeated the ſignal for the line of battle?

*A.* I never ſaw the ſignal for the line flying on board the Formidable.

*Q.* Do you think that in paſſing the Victory the Formidable could ſee the ſignal for the line?

*A.* Yes, certainly.

*Sir H. Pal.* It is admitted.

*Q.* What time did the Victory wear from the larboard to the ſtarboard tack, and did ſhe do it by ſignal?

*A.* It was by ſignal; and ſhe did it at or about three o'clock.

*Q.* Was it repeated, and by whom?

*A.* Upon my word I cannot ſay; Captain Marſhall was ſo exceedingly exact in the repetition of ſignals, that I dare ſay it was? but my ſtation was ſo near the Admiral, that I had no occaſion to look to the frigate for it.

*Q.* What other general ſignals were made while the Admiral was on the ſtarboard tack till dark?

*A.* The ſignal for the line was hauled down, and the ſignal for ſhips to bear down into the Admiral's wake hoiſted in its place. It was ſoon hauled down,

and the ſignal for the line was again hoiſted and flew till dark; and afterwards, for what I know, the ſignal for bearing down was hoiſted under the ſignal for the line of battle. There was another ſignal which I do not underſtand as a general ſignal, but which certainly flew without pendants for ſome time; the Spaniſh flag at the main-top-gallant-maſt head.

*Q.* Did the Vice-Admiral of the Blue repeat the ſignal for ſhips to come into the Admiral's wake?

*A.* He did.

*Q.* Was the ſignal for the line repeated by the Vice-Admiral of the Blue?

*A.* I did not ſee it repeated.

*Q.* Did you take notice of the Fox coming under the Admiral's ſtern, and at what time was it?

*A.* I did not ſee the Fox particularly; I ſaw frigates paſſing and re-paſſing.

*Q.* Did it appear to you that Sir Hugh Palliſer, by ſignal, or otherwiſe, ſignified to the Commander in Chief his incapacity to obey the ſignals which were made on board the Victory?

Some little diſpute aroſe about this queſtion, and the Preſident aſked Captain Jervais if the Foudroyant was the neareſt ſhip a-ſtern of the Victory, and did ſhe keep that ſtation all the afternoon?

*A.* After the Admiral wore to the ſtarboard tack, ſhe was.

*Q.* Did you ſee the Fox ſtretch away to the Formidable on the larboard tack?

*A.* I cannot ſpeak particularly to any of the frigates.

*Q.* What number of ſhips were formed in the centre diviſion at ſix o'clock?

*A.* I believe to the beſt of my recollection, all the ſhips were in their ſtations, except the Vengeance and the Sandwich. It is nine months ago, and I cannot ſpeak with preciſion. The Vengeance was in the Admiral's wake, but not cloſed in with the line, I think.

*At half paſt three the Court adjourned.*

EIGHTH

EIGHTH DAY, TUESDAY, APRIL 20.

*At ten o'clock the Court aſſembled.*

*The evidence of Captain Jervais continued.*

Captain Jervais deſired the queſtion at the cloſe of his examination yeſterday might be read. The queſtion and anſwer were read accordingly.

*Capt. Jervais.* In mentioning the Sandwich, I did not mean to ſay ſhe was not in her ſtation.—She was not connected with the centre diviſion.

*Q.* What was the poſition of the Red diviſion at ſix o'clock?

*A.* I cannot exactly ſay.

*Q.* Were the enemy at that hour formed in a regular line of battle; and how did the headmoſt ſhips bear from the centre diviſion of the Britiſh fleet?

*A.* The van of the enemy appeared to be in a line of battle, ſteering very near parallel to a part of the centre diviſion. I cannot ſay to what number of ſhips.

*Q.* What was their diſtance from the centre diviſion?

*A.* To the beſt of my recollection about two miles.

*Q.* What was the poſition of the Vice-Admiral of the Blue at that time?

*A.* She was upon the weather-quarter of the Foudroyant, between two and three miles diſtant.

*Q.* Was the Britiſh fleet at any, and at what time in the afternoon in a ſituation to re-attack the enemy, if the Vice-Admiral of the Blue had come down?

*A.* I cannot ſpeak poſitively to that queſtion.

*Q.* What were the number of ſhips of the Vice-Admiral of the Blue's diviſion with him at that period?

*A.* The greateſt part were with him, but I cannot aſcertain the number?

*Q.* Did it appear to you that the diſobedience of the Vice-Admiral of the Blue to the ſignals then flying was the reaſon that the attack was not renewed?

*A.* It was certainly the reaſon that the fleet was not collected, but not being the commander of the fleet, I cannot any otherways anſwer that queſtion.

Q. At what hour did the Formidable take her ſtation in the line on the evening of the 27th?

*A.* At no hour that I ſaw.

*Sir H. Palliſer.* I admit that the Formidable did not get into her ſtation after the Victory paſſed her on the tack and bore away leaving him at a great diſtance.

(This being required to be entered on the minutes, the Court was ordered to be cleared.)

On the re-admiſſion of the audience the Judge Advocate, ſaid—The Preſident adviſes Sir Hugh Palliſer to defer his reaſons till he has occaſion to make his defence.

Q. How long was it after the action, before the Foudroyant was repaired and fit for action?

*A.* She was very fit for action at three o'clock.

Q. When the Victory wore to the ſouthward, did ſhe not bear away from the wind?

*A.* Soon after ſhe wore ſhe did.

Q. What rate did the Foudroyant go at after that time, and what ſail did ſhe carry?

*A.* It is impoſſible for me to be accurate; I ſuppoſe about three knots, and ſometimes leſs; her ſail varied; the log-book will inform the Court. She had at times her top-ſails treble-reefed, and not near hoiſted up, becauſe they were much ſhot.

Q. Do you know what rate ſhe went at after hauling her wind; and if then under the ſame ſail?

*A.* To the beſt of my recollection, we were obliged to keep our fore-ſail conſtantly up, to keep in our ſtation a-ſtern of the Victory. I know not what rate we went at, but I remember ſhe carried her helm a-lee, conſequently her way could not be much.

Q. What was the poſition of the Vice-Admiral of the Blue with reſpect to the Foudroyant, at that time?

*A.* I cannot ſpeak poſitively, becauſe I do not know the preciſe time the Vice-Admiral of the Blue had increaſed his diſtances, but he had altered his bearings very little at that part of the afternoon.

Q. Was the Formidable right a-ſtern, or how?

*A.* She

*A.* She was on the weather-quarter.

*Q.* At what time did the Admiral haul his wind?

*A.* I cannot ſay the preciſe minute.

*Q.* Had you increaſed your diſtance from the Formidable when you went large, and till you hauled your wind?

*A.* The diſtance was increaſed from the Vice-Admiral of the Blue's keeping his wind, and the Admiral leading large; but who it was that tended to that effect, I cannot ſpeak to. The diſtance was certainly increaſing every inſtant from the time that the Admiral wore, as the Vice-Admiral of the Blue was very near to him at that time; the Court will determine to what the increaſe of the diſtance is to be attributed.

Admiral Digby here obſerved, that Captain Jervais had ſaid, in anſwering a former queſtion, that the Vice-Admiral of the Blue had increaſed his diſtance, and altered his bearings very little. Captain Jervais, however, ſet the Admiral right, and ſhewed that he had ſaid expreſsly the contrary. "He had increaſed his diſtance, but altered his bearings very little." It was accordingly corrected on the minutes.

*Q.* Did the diſtance increaſe till you hauled your wind? *A.* Yes.

*Q.* Can you ſay what ſail the Formidable carried?

*A.* Her fore-top-ſail was unbent. I cannot ſpeak poſitively to her other ſails.

*Q.* When were the centre and van diviſions formed in the line?

*A.* The centre I have already deſcribed, but when the van got into their ſtations I cannot poſitively ſay.

*Q.* Did the ſail that the Victory carried between five and ſeven o'clock prevent the Vice-Admiral of the Blue from getting into his ſtation?

*A.* I know no impediment to the Vice-Admiral of the Blue's getting into his ſtation, I ſhould ſuppoſe not; but I do not know the interior ſtate of the Formidable.

*Q.* At what hour were the ſignals for the diviſion

of the Vice-Admiral of the Blue made to bear down into the Admiral's wake?

*A.* Having no minutes, I cannot ſay to the hour.

*Q.* Were any or all of them, in the line that evening?

*A.* They were not all there. I ſaw ſome of them bear away.

*Q.* Did you ſee the diſtinguiſhing lights on board the flag-ſhips that night?

*A.* I ſaw them diſtinctly on board the Victory; but I did not ſee them on board the Queen, there being ſo many ſhips between me and her; and the Victory was ſo near and ſo high, that it intercepted my view. I did not ſee them on board the Formidable.

*J. Adv.* Deſcribe the ſituation of the Formidable at daybreak in the morning of the 28th.

*Q.* I do not recollect it.

*Q.* What time did the Vice-Admiral of the Red paſs the Foudroyant, to take his ſtation a-head of the Victory?

*A.* To the beſt of my recollection it was paſt five o'clock.

*Q.* At what time was you neareſt to the Formidable?

*A.* At three o'clock, or a little after.

*Q.* Did you make any obſervations on the Formidable?

*A.* I was too particular in keeping my own ſtation to make any obſervation; the Foudroyant and Formidable paſſed the Victory very near in wearing from the ſtarboard to the larboard tack.

CROSS-EXAMINATION BY SIR HUGH PALLISER.

*Q.* When you paſſed the Formidable ſo near as you have deſcribed, did ſhe appear to have ſuffered much?

*A.* Moſt certainly ſhe did appear to have ſuffered very much in her ſails.

*Sir H. Palliſer.* I will not trouble Captain Jervais with any more queſtions now, being apprehenſive I may have occaſion to call him again in two or three days.

*Capt.*

*Captain Jervais.* I will attend with the greateſt patience, though it will be highly inconvenient to me; but if I could be permitted to go to London for a day or two I ſhould be glad, having ſome buſineſs of conſequence to execute there.—I will leave my addreſs with the Judge Advocate.

*Sir H. Palliſer.* I beg the Captain may have leave to go, and if I ſhall have occaſion for his further attendance, I will give him due notice of it.

*The Court conſented, and he withdrew.*

VICE-ADMIRAL SIR ROBERT HARLAND CALLED IN AND SWORN.

*The order of the Admiralty read.*

Q. Did you ſee the Formidable in the line of action, and what were your obſervations on her conduct?

*A.* I ſaw her before ſhe came out of the cannonade; my obſervations on her conduct were fairly theſe: I think that there was merit in the manner in which the fire was conducted, but it was no more than equal merit to every other ſhip that either came before or after the Formidable; more was not neceſſary than that, for it eſtabliſhed the good behaviour in that inſtance of every individual concerned in it. But the Court will conſider, that in purſuing the French it was an allurable ſtroke in war to attack as we did, as nothing but a riſk could keep them from running away. The great and deciſive ſtrokes of the day were to follow by cloſing with the enemy, and fighting it out.

Q. Did you ſee the Formidable on the larboard tack immediately after ſhe came out of action?

*A.* Upon the oath I have taken I never ſaw her on the larboard tack.

Q. At what time did you firſt ſee her on the ſtarboard tack after coming out of action?

*A.* To the beſt of my recollection it was when I paſſed her to leeward, to form a-ſtern of the fleet, my diviſion being then on the ſtarboard tack.

Q. Did you ſee the Victory on the larboard tack, and what ſignal had ſhe then flying?

*A.* I certainly ſaw her on the larboard tack, but being a-head of the Victory I did not ſee what ſignals ſhe had flying.

Q. At what hour was it that you paſſed the Formidable to take your ſtation in the rear?

*A.* To the beſt of my recollection, between three and four o'clock.

Q. When did the Red diviſion quit that poſition to take their ſtation a-head of the centre?

*A.* About five o'clock.

Q. Was the ſail the Victory carried, when you paſſed her, ſuch as to prevent the Vice-Admiral of the Blue from taking his ſtation in the line?

*A.* The Vice-Admiral of the Blue, and his diviſion, were to windward. The Commander in Chief carried but little ſail; conſequently, if the Vice-Admiral of the Blue had carried a proportionable ſail, there was nothing to prevent them that I know of.

Q. What was the poſition of the centre of the Red diviſion at ſix o'clock relative to the Victory, and how far diſtant from her?

*A.* About ſix o'clock the centre of the Red diviſion was nearly, if not altogether, in their ſtation in the line a-head; but I am not ſure if I ought not at that time to except the Monarch and Berwick.

Q. At what time was the Red diviſion in a regular line of battle a-head of the centre, and what number of ſhips were in it?

*A.* All the diviſion, except the Berwick and the Monarch (though I am not quite ſure as to them) were formed by ſix o'clock, or thereabout. I wiſh to be underſtood, that, at this diſtance, I cannot be accurate as to time. I would not confine myſelf to half an hour.

Q. When you got into your ſtation in the line on the evening of the 27th, do you think there was daylight enough to renew the action, if the Vice-Admiral of the Blue, and his diviſion, had been in their ſtation in the line? *A.* On

*A.* On the 27th of July it was not dark till near nine o'clock, therefore, I think, there was full time, if the French fleet had remained where they were.

*Q.* What was the poſition and diſtance of the headmoſt ſhip of the French fleet from the Queen at the time the Red diviſion were in the line?

*A.* The French fleet were ranging up almoſt in a parallel line to the Engliſh line at leſs than two miles diſtance, I think; and the headmoſt ſhip, at that time, had led on to the ſouthward of the Victory, and was very near a-breaſt of the Queen.

*Q.* Was the French fleet at that time in a regular line of battle?

*A.* As to direction they were, but not as to diſtance.

*Q.* What was the poſition of the Vice-Admiral of the Blue, and his diſtance at that hour?

*A.* They were to windward of the Red diviſion, but I was employed in my attention to my own diviſion, and the French line.

*Q.* Did you ſee the general ſignal repeated, or obeyed by the Vice-Admiral of the Blue during the afternoon of the 27th?

*A.* My poſition admitted of my ſeeing all the ſignals that were made by the Commander in Chief after he got upon the ſtarboard tack. The ſignal for ſhips to come into the Admiral's wake was repeated by the Vice-Admiral of the Blue, but not obeyed either by the Vice-Admiral, or by any of the diviſion. It was obeyed by ſome part of the diviſion when it was made the ſecond time. As I underſtand the ſignal for the line was not obeyed by the Vice-Admiral, nor any part of his diviſion, nor repeated by him.

*Q.* Was the ſignal for the line flying on board the Queen all the afternoon, and at what time was it hauled down?

*A* It flew all the afternoon, and was not hauled down.

*Q.* If the ſignal for the line had been flying on board the Formidable, would you not have ſeen it?

*A.* I

*A.* I did not expect to see it flying there, and therefore I did not look for it.

*Q.* Why did you not expect to see it there?

*A.* I had then, and I have now, too great an opinion of the knowledge of the Vice-Admiral of the Blue to think that he would repeat that signal which would have called his division to him, when he did not make any visible effort to obey it himself.

*Q.* Did you see any impediment in the Formidable to obey that signal?

*A.* The Formidable had not lost a mast, nor even a yard, therefore there was no material impediment that I saw.

*Q.* Do you think that the Vice-Admiral of the Blue's not bearing down into his station, was the cause that the fight was not renewed?

*A.* Had the Vice-Admiral of the Blue been in his station, to suppose that the attack would not have been renewed, is supposing that the Commander in Chief would not have renewed it at all.

*Q.* What was the situation of the Formidable on the morning of the 28th?

*A.* I do not recollect; the thing was then over, and I looked no further to her.

*Q.* Did you carry distinguishing lights in the Queen in the night of the 27th?

*A.* I certainly did in that, and every night.

*Q.* Do you know of any other circumstance in the conduct of the Vice-Admiral of the Blue which you think reprehensible, other than you have already informed the Court of, and which you think necessary for their information?

*A.* I should be very sorry that I knew more than the Court knows of this, as I know that they have the minutes of the former trial before them for their information, and the evidence of many able officers in the present trial; and whoever takes in a newspaper may read and know what that evidence is, although I confess it appears to be either *stupidly* or *artfully mangled* by some of them; therefore, as the Court

are,

are, and will be, fully informed of every thing that can be neceſſary to give an unerring judgment on this trial, I have nothing more to ſay.

The Court was here cleared; and on the return of ſtrangers, the Judge Advocate addreſſed Sir Robert in the following manner: "Is the Court to under-"ſtand from what you have ſaid, that you know of "no other reprehenſible circumſtance in the conduct "of Sir Hugh Palliſer than what you have already "related to them? As to what you have ſaid reſpecting "the newſpapers, the Court have nothing to do with "them, and it is foreign to the queſtion and the bu-"ſineſs of the trial. They cannot admit it to ſtand "part of the minutes."———Sir Robert begged to know if he might be permitted to give his reaſons for what he had ſaid. In this he was reſiſted: when he told the Court, that he had been a ſeaman for many years, and had attended many Courts-Martial; but that this was the firſt, and the only Court where he had ſeen a witneſs ſtopped in what he had to ſay; anſwers dictated to him, and prevented from giving what he thought neceſſary to the anſwer of the queſtions that were put to him: every other Court-Martial that he had ſeen, heard every witneſs to the end of what he had to ſay, and then did with his evidence what they thought proper: but this was immaterial to him; the propriety of their meaſures reſted with themſelves.

The ſame queſtion was again put to him: Is the Court to underſtand that you know of no other reprehenſible circumſtance in the conduct of Sir Hugh Palliſer?

My anſwer is, that ſo far from endeavouring to recollect new matter to charge and load the Priſoner with, I have been trying to forget moſt of the unhappy buſineſs that is gone and paſt. It has been my endeavour to forget what I thought I ſaw amiſs as far as I could.

Q. When you paſſed between the Victory and the Formidable

Formidable to take your ſtation a-head, what diſtance might you be from each when between them?

*A.* As near as I can recollect I was about an equal diſtance from each; and the idea I have is, that I was about a mile and an half from each.

*Q.* When the Red diviſion got into the line of battle on the evening of the 27th, what ſail were you under, and how many knots did you go?

*A.* As near as I can recollect, about two knots, under three; my ſail was juſt neceſſary to keep my ſtation in the line.

*Sir H. Palliſer.* I have nothing to ſay to Sir Robert now; I ſhall call upon him another time.

*Withdrew.*

THE HON. CAPT. LEVESON GOWER, LATE OF THE VALIANT, CALLED IN AND SWORN.

*Q.* Did you ſee the Formidable on the larboard tack after ſhe came out of action on the 27th of July?

*A.* No.

*Q.* Did it appear to you that the general ſignals made on board the Victory, were repeated on board the Formidable, at any time that afternoon?

*A.* I never ſaw any ſignal on board the Formidable but the blue flag at the mizen-peak and pendants; but I did not ſee her till about three o'clock, and when the fleet was on the ſtarboard tack.

*Q.* What ſail had ſhe ſet at that time?

*A.* Her fore-top-ſail was unbent, but I cannot ſay what other ſail ſhe had.

*Q.* What was the poſition of the Valiant when you was on the ſtarboard tack with reſpect to the Victory?

*A.* The ſhip was next a-head of her in the line.

*Q.* Did you paſs near the Formidable?

*A.* No.

*Q.* What time did the Red diviſion paſs the Valiant, in going from the ſtern a-head of the Victory to take their ſtation in the van?

*A.* I fancy a little after five o'clock.

*Q.* What

*Q.* What was the diſtance and poſition of the Vice-Admiral of the Blue, at this time with reſpect to the Valiant?

*A.* I did not ſet her by compaſs, but I ſhould ſuppoſe about two or three points abaft the beam, and I ſuppoſe about two and a half or three miles.

*Q.* Did the Formidable appear to you, not to be in a condition to obey the ſignals made that afternoon?

*A.* All her maſts and yards were ſtanding, and only her fore-top-ſail unbent, that I recollect to have ſeen.

*Q.* Did it appear to you that the Formidable's diſobedience to the ſignals of the Admiral, was the cauſe of the action not being renewed?

*A.* I thought ſo at the time.

*Q.* What time in the evening did you ſee the Formidable regain the line?

*A.* I never ſaw her in the line that night.

*Q.* At what rate did the Valiant go, and what ſail was ſhe under?

*A.* The log was not hove; we were always backing and filling till dark.

*Q.* Was the ſail the Victory carried, ſuch as to prevent the Formidable from getting into her ſtation in the line?

*A.* The Formidable was to windward, and as I think could have got into her ſtation.

*Q.* Did you ſee any viſible efforts on board the Formidable that afternoon to get into her ſtation?

*A.* No.

*Q.* What was her poſition in reſpect to the Valiant when you firſt ſaw her on the morning of the 27th?

*A.* I do not remember noticing it.

*Q.* What time was the Red diviſion in their ſtation in the line a-head?

*A.* I ſuppoſe about an hour from the time they made ſail.

*Q.* What was the poſition and diſtance of the headmoſt ſhip of the French fleet at this time?

*A.* The fourth and fifth ſhip was a-head of me, and two miles diſtance or rather more.

*Withdrew.*

CAP-

CAPTAIN MACBRIDE OF THE BIENFAISANT, CALLED IN AND SWORN.

*Q.* Did you ſee the Formidable on the larboard tack, after ſhe came out of action?

*A.* No.

*Q.* Did it appear to you that the Formidable repeated the general ſignals that afternoon?

*A.* I ſaw her repeat the ſignal for coming into the Admiral's wake, but no other.

*Q.* When did you firſt ſee the Formidable after the Bienfaiſant came out of action?

*A.* As the ſignal for battle was not hauled down, I had determined to follow Sir Robert Harland, who was leading down to battle; but that ſignal ſoon coming down, and the ſignal for the line a-head being hoiſted, I bore away to the centre diviſion, and then I obſerved the Formidable, meeting her on the ſtarboard tack.

*Q.* At what time was this?

*A.* I believe it was about two o'clock, but I cannot be exact as to time.

*Adm. Digby.* Was the Formidable upon the ſtarboard tack?

*A.* She certainly was.

*Q.* What ſail was the Formidable under at this time?

*A.* I believe her top-ſails and fore-ſail, her jib ſhot away, hanging off the end of the boom.

*Preſident.* What diſtance was the Formidable from the Victory at this time?

*A.* It is a difficult point to tell the diſtance between two ſhips. I was a little way a-ſtern of the Victory; ſhe was in the middle, and might be a mile from me.

*Q.* What diſtance was the Formidable from the Bienfaiſant?

*A.* About two miles or two and a half: My attention was taken up in ſaving a man who was floating along-ſide in a tub, and we threw out a boat to ſave him.

*Q.* Wha

*Q.* What was the poſition of the Bienfaiſant after you got upon the ſtarboard tack, with reſpect to the Victory?

*A.* The Formidable bearing away on the ſtarboard and Sir Robert Harland having placed himſelf a-ſtern, I made ſail, and formed a-head of the Victory, concluding that the line was to be inveſted, and that the Blue diviſion was to lead on the ſtarboard tack. I continued there till five o'clock, when the ſignal was made to take my ſtation.

*Q.* What time did the Red diviſion paſs the Bienfaiſant in going a-head of the Victory to take their ſtation in the van?

*A.* Between five and ſix o'clock; they weathered me about a mile and a half, or two miles.

*Q.* What was the poſition of the Vice-Admiral of the Blue between five and ſix with reſpect to the Bienfaiſant?

*A.* On my weather-beam, about three miles; the Red diviſion paſſed between us.

*Q.* Was you a-head of the Victory, or a-ſtern at this time?

*A.* The ſternmoſt ſhip that was formed.

*Q.* Did the Formidable appear to you not to be in a condition to obey the ſignals that were made in the afternoon?

*A.* There appeared no reaſon to prevent her that I ſaw; her fore-top-ſail was unbent.

*Q.* Did the Vice-Admiral's diſobedience to the ſignals appear to you the reaſon why the attack was not renewed?

*A.* I believe it was.

*Q.* What time in the evening did you ſee the Formidable get into her ſtation in the line?

*A.* I did not ſee her get into the line at all.

*Q.* At what time was the diviſion a-head of the line in the centre?

*A.* Six o'clock.

*Q.* At what rate did the Bienfaiſant go while ſhe wore away with the Admiral to the ſouthward?

*A.* About

*A.* About five miles an hour; it is mere gueſs-work; I heaved no log.

*Q.* How long did the Bienfaiſant wear away, and when did ſhe come to her wind?

*A.* I ſhould imagine about half an hour, until I joined the Admiral. I cannot be particular as to the time. There is a member of the Court who knows better than I, as he was the leewardmoſt ſhip. The Victory bore away till ſhe covered the wounded ſhips.

*Q.* After the Bienfaiſant had joined the Victory, what courſe did you ſteer?

*A.* Hauled the wind, as ſhe did.

*Q.* After the Victory hauled her wind on the ſtarboard tack, was the ſail ſhe carried ſuch as to prevent the Formidable getting into her ſtation?

*A.* No, by no means; ſhe kept us very good company without her fore-top-ſail.

*Q.* What was the poſition of the Formidable when you firſt ſaw her on the morning of the 28th?

*A.* At daylight my attention was taken up with the French ſhips that were left behind that ſhewed lights a-breaſt of me, I bearing to them. I concluded my ſignal would be made for chaſing. It was made, and when I returned from chaſing I ſaw the Formidable pretty near, on the weather-quarter of the Victory, in the ſouth-weſt.

*Q.* Did you ſee the diſtinguiſhing lights of the different Admirals on the night of the 27th?

*A.* The Victory's I ſaw very plain, but no other lights.

*Captain Macbride withdrew, and was diſcharged from any further attendance.*

*Adjourned till next morning at ten o'clock.*

NINTH DAY, WEDNESDAY, APRIL 21.

*At half paſt ten o'clock the Court was reſumed.*

CAPTAIN ISAAC PRESCOTT, LATE OF THE QUEEN, CALLED IN AND SWORN.

*Q.* Did you ſee the Formidable on the larboard tack after ſhe came out of action?

*A.* I did not.

*Q.* When

*Q.* When did you firſt ſee her on the ſtarboard tack?

*A.* I obſerved her while in action, and as ſhe was coming out of action, on the ſtarboard tack; I cannot ſpeak as to time; but I never ſaw her on the larboard tack.

*Q.* Did you ſee the Victory on the larboard tack, and what general ſignals had ſhe then flying?

*A.* I did ſee the Victory on the larboard tack; about three o'clock ſhe made the ſignal to wear to the ſouthward upon the larboard to the ſtarboard tack, which we repeated, and as ſhe was wearing I obſerved to Sir Robert Harland, that the Victory had the ſignal of the line of battle, which we repeated immediately.

*Adm. Digby.* When you ſaw the Formidable come out of action, where was the Victory?

*A.* I really cannot recollect.

*Q.* When you ſaw the Formidable come out of action, in what ſituation did ſhe appear to be in with reſpect to her ſails and rigging?

*A.* Her fore-top-ſail-yard appeared to be on the cap, or near it; I made no other obſervation of her.

*Adm. Digby.* As you ſaw the Formidable in action, in what manner did ſhe appear to you to behave?

*A.* Very handſomely and properly.

*Q.* At what time was it that you paſſed the Formidable to take your ſtation in the rear?

*A.* Between half paſt three and four.

*Q.* Did you make any further obſervations of the Formidable at that time?

*A.* No; I did not.

*Capt. Duncan.* By whoſe orders did you take that ſtation, and by whom were they conveyed to you?

*A.* By the Proſerpine from the Admiral, and they were conveyed by hailing.

*Q.* Was there any cheering between the two ſhips?

*A.* None.

*Q.* At what time did the Red diviſion quit that poſition to take their ſtation a-head?

*A.* Nearly at half after five; I cannot ſpeak preciſely.

*Q.* Was the ſail the Victory carried, when you paſſed her, ſuch as to prevent the Formidable from taking her ſtation in the line?

*A.* Certainly not.

*Q.* When the Queen paſſed between the Victory and Formidable to take her ſtation a-head, what was her diſtance from each of thoſe ſhips?

*A.* I really cannot ſpeak with preciſion as to diſtance; we paſſed to windward of the Victory, and the Formidable was to windward of us.

*Q.* Was any meſſage received on board the Queen from the Victory after that ſent by the Proſerpine; if ſo at what time was it received, and what was the meſſage?

*A.* At half paſt five nearly, the Milford brought us orders from the Admiral to make ſail a-head, and form in our ſtation.

*Q.* Was it delivered by hailing.

*A.* It was.

*Q.* After it was delivered, how long was it before the Red diviſion got into their ſtation in the line a-head of the centre?

*A.* To the beſt of my recollection it was ſeven o'clock, or a little after it.

*Q.* What ſail did you keep under, and at what rate did you go till night?

*A.* I muſt ſpeak from the log-book to that queſtion. For the firſt hour we went three knots, and from that time we went from one knot and ſix fathoms to two knots and four fathoms; we had double-reefed top-ſails and fore-ſail; ſometimes the mizen-top-ſail a-back, and ſometimes full, to keep our ſtation.

*Q.* When you got into your ſtation in the line on the evening of the 27th, do you think there was daylight ſufficient to renew the action, if the Vice-Admiral of the Blue had been in his ſtation in the line?

*A.* I certainly do.

*Q.* What

*Q.* What was the poſition and diſtance of the head-moſt ſhip of the French fleet in reſpect to the Queen at the time the Red diviſion were formed in a line?

*A.* I cannot anſwer that queſtion poſitively in reſpect to the Queen.

*Q.* Was the French fleet then in a line of battle?

*A.* They were in a line of battle to leeward, but I cannot ſpeak as to diſtance.

*Q.* What was the ſituation and poſition of the Vice-Admiral of the Blue at that time?

*A.* I did not attend to him.

*Q.* Did you ſee the general ſignals repeated or obeyed by the Vice-Admiral of the Blue that afternoon?

*A.* I did not obſerve them.

*Q.* Was the ſignal for the line of battle repeated or obeyed by the Vice-Admiral of the Blue?

*A.* I did not obſerve it.

*Q.* Was it flying on board the Queen all the afternoon, and when was it hauled down.

*A.* To the beſt of my recollection it was flying not only all the afternoon, but all night.

*Q.* Did you perceive any impediment in the Vice-Admiral of the Blue to get into his ſtation that afternoon.

*A.* That is a queſtion of delicacy. I did not perceive any other but her fore-top-ſail being unbent.

*Q.* Do you think that the Vice-Admiral of the Blue's not bearing down to his ſtation was the reaſon why the attack was not renewed?

*A.* I apprehend it was.

*Q.* Did you carry any diſtinguiſhing lights on board the Queen on the night of the 27th.

*A.* We did.

*Q.* What poſition was the Formidable in when you firſt ſaw her on the morning of the 28th.

*A.* I never looked at her at all.

*Ad. Digby.* What was the ſituation of the Queen with reſpect to the Victory, at daybreak, in the morning of the 28th.

*A.* I am not equal to anſwer that queſtion; and the

reason is, that the Admiral himself stopped me from getting out of my cot when I was about to rise, because I had been for some days very much fatigued, and he would send for me the very minute he wanted me.

CROSS-EXAMINATION.

*Sir H. Pal.* You say that you observed the signal for the line and the signal for wearing at the time the Victory was wearing, might not those signals have been up before that time?

*A.* I suppose the signal for the line might, I meant it to be understood that I did not see it before; but I have reason to believe it had been flying for some time, as I did not see it when it was hoisted.

*Q.* Did you see the signal for wearing hoisted.

*A.* I cannot say; it might be so; but I think not, as a gun was fired which drew my attention towards the Victory at that time.

*Q.* Did you see the Blue flag at the mizen-peak at the same time with the signal for the line, and at that time, or how soon after?

*A.* To the best of my remembrance it was hoisted with the signal for the line, not at the moment I have been speaking of, but about half past three o'clock, almost immediately when the Proserpine delivered the message to the Queen.

*Q.* When you did see that signal, was not your division considerably to windward of the Victory?

*A.* That part of the division with the flag was to windward of the Victory.

*Q.* How many were there?

*A.* Seven to the best of my recollection.

*Q.* Was not the Formidable the last ship that left the action and joined the Victory?

*A.* She was the last ship I saw that fired upon the enemy, but I know nothing of her joining the Victory.

*Q.* You have said that the sail the Victory carried was not such in your opinion as to prevent the Formidable from coming into her station, I would therefore ask of you if you know any thing of the condition of the Formidable at that time?

*Q.*

*A.* It is impoſſible at that time that I ſhould know any thing of the condition of the Formidable but from my own obſervation.

*Q.* At the time that you ſpeak of the Red diviſion being formed in the line a-head, was the whole of that diviſion formed?

*A.* I have anſwered that queſtion in my croſs-examination by the Court; I did not make any obſervation, and I do not recollect.

*Q.* Can yon ſpeak to the Monarch and Berwick?

*A.* I cannot.

*Q.* Was it not very cloudy, ſqually, and blowing freſh in the evening of the 27th.

*A.* It did blow freſh, and had the appearance of more wind.

*Preſident.* Do you mean the whole afternoon, or the evening only of the action?

*A.* I mean in the evening only, becauſe from twelve to three and four o'clock in the morning we went only one knot ſix fathoms, when under the ſame ſail I had gone four knots before.

*Withdrew.*

SIR CHARLES DOUGLAS, LATE CAPTAIN OF THE STIRLING CASTLE, NOW OF THE DUKE, CALLED IN AND SWORN.

*Q.* After coming out of action on the 27th of July was the Stirling Caſtle one of the ſhips that tacked with the Vice-Admiral of the Red, and ſtood towards the enemy?

*A.* She was.

*Q.* When you firſt ſaw the Formidable what tack was ſhe on; and did ſhe appear to you much diſabled?

*A.* When I firſt ſaw the Formidable I was ſtanding to the ſouthward again on the ſtarboard tack, following Sir Robert Harland, I do not recollect at what time I repaſſed the Formidable, but it was then I firſt ſaw the Formidable, and on the ſtarboard tack, ſhe appeared to have ſuffered conſiderably in battle in her ſails and rigging, and thus I repaſſed to leeward of her.

*Q.* What tack was the Victory on, and what general ſignals were then flying?

*A.* The Victory was alſo on the ſtarboard tack. The ſignal for the line of battle, and the blue flag at the mizen-peak, were then flying.

*Adm. Digby.* How was the Formidable ſituated with reſpect to the Victory, when you firſt ſaw thoſe ſignals flying?

*A.* Broad upon the Victory's weather-quarter, but I cannot at this time aſcertain how many points abaft her beam; I ſhould think rather more than two miles diſtant; it might be towards three miles.

*Q.* Did the Formidable appear to you to have got into her ſtation in the line in obedience to the ſignals then flying?

*A.* No.

*Q.* What time in the evening did you get into your ſtation?

*A.* I cannot poſſibly recollect; but I got into it as ſoon as the ſlow progreſs, and therefore irregular way of the diviſion did with ſafety admit.

*Q.* Did you ſee any impediment to the Formidable's getting into her ſtation?

*A.* I am not aware of any.

*Q.* Did you ſee the diſtinguiſhing lights on board of the Queen in the night?

*A.* I did frequently.

*Q.* Did you ſee the diſtinguiſhing lights on board the Formidable?

*A.* Am I allowed to allude to the former minutes,

*J. Adv.* No Sir.

*A.* I did not ſee the Formidable's lights, nor did I ſee the Formidable during the night, until at or about the firſt dawning of the day of the 28th, when I obſerved a ſhip coming up upon the weather-quarter of the Stirling Caſtle, having a flag at her fore-top-maſt head, but having neither diſtinguiſhing lights burning nor enſign flying.

*Q.* Do you know that ſhip to have been the Formidable?

*A.* I

*A.* I do. I am perfectly ſatisfied thereof.

*Sir Chal. Ogle.* From what circumſtances are you enabled to ſay poſitively that it was the Formidable?

*A.* From having, as ſhe paſſed along before my beam towards the weather-bow (I do not know exactly how many points) ſeen her have then a blue enſign flying, and then diſtinguiſhing clearly the flag of the fore-top-maſt head to be blue; which I had not been able to do until ſhe paſſed before my weather-beam.

*Q.* Are you ſure ſhe was a three-decked ſhip?

*A.* Moſt undoubtedly; having ſeen lights on her middle deck.

*Adm. Digby.* How was you ſituated with reſpect to the Queen, and alſo with reſpect to the Victory at that time?

*A.* I do not know exactly, not having had my eye fixed upon either of them. I was upon the weather-quarter of the Berwick, my immediate leader in the line of battle, whom I ever kept my eye upon, until the ſhip in queſtion claimed an equal ſhare of my attention.

There is one remark which I beg leave to mention to the Court. Bearing up to get into my ſtation, as the day advanced, and that I could with ſafety do, on ſeeing the ſhip alluded to, with her enſign and blue flag, I could not help wondering, without accounting in my own mind how it happened, whence it came that the two Vice-Admirals were ſo near each other.

*Q.* How was the weather in the evening of the 27th, and at the time you ſaw the Formidable at the dawn of day?

*A.* To the beſt of my recollection, but I do not pretend exactly to recollect, the weather was a little ſqually, and, at times, partially hazy, ſo as to conceal one ſhip for ſome time, and admit of another being ſeen.

*Sir Chal. Ogle.* Deſcribe the poſition of the three diviſions as nearly as you can as the day came on.

*A.* The centre and rear diviſions were in a line of battle, to the beſt of my knowledge and belief, as nearly as their ſlow ſailing, agreeable to ſignal, could admit of their keeping themſelves ſo; but I cannot, with any degree of preciſion, ſpeak as to the reſt of the fleet; though I did ſee other ſhips, I cannot ſay how many, on my weather-quarter, ſoon after I firſt got ſight of the Formidable.

*Q.* Did you perceive at any time, as the day advanced, the Formidable, after having paſſed you, endeavour, on perceiving her miſtake, to regain her ſtation?

*A.* After having been fully ſatisfied of that ſhip being the Formidable, by the diſplay of her blue enſign, and the colour of her flag at the fore-top-maſt head, being quite at eaſe, as to her identity, I took no further notice of her.

*Q.* What time in the evening of the 27th did the Red diviſion get into their ſtation in the line of battle?

*A.* I do not recollect.

*Q.* Do you know what time the Monarch and Berwick got into their ſtations in the line of battle on that afternoon?

*A.* I do not.

*Preſident.* Was you one of the diviſion formed aſtern of the Victory?

*A.* I was; and I would further obſerve that the Formidable muſt have been ſeen from the Berwick, my immediate leader; and, if the Court ſhould think it neceſſary, there are two perſons on board the Duke, whoſe evidence may be adduced in teſtimony to the Court, reſpecting the ſituation of the Formidable, as I have deſcribed on the morning of the 28th.

*Captain Peyton.* There can be no occaſion, Sir, to bring evidence in ſupport of what you ſpeak to ſo poſitively.

CROSS-EXAMINATION BY SIR H. PALLISER.

*Q.* You ſay you do not know whether the Berwick got into her ſtation before night?

*A.* I

*A.* I do not.

*Q.* You have deſcribed the weather to be ſqually and hazy, ſo as to intercept the view of ſhips. Might you not be deceived in imagining you ſaw a blue flag at the fore-top-maſt head?

*A.* I have deſcribed the weather to be ſqually and partially hazy, but that did not operate in the firſt view I had of the Formidable, the weather being then clear in that quarter, though hazy in the oppoſite. Moreover, the day was then beginning to dawn, ſo that I could not be miſtaken as to the flag in queſtion, though I could not at firſt diſtinguiſh the colour.

*Q.* You mention that ſhip to be without diſtinguiſhing lights, or enſign flying. Did you conſider that as a proof of its being the Formidable, or as a cauſe of doubt?

*A.* I did conſider that as a cauſe of doubt, and was not without apprehenſion but the French might have made a trip, and doubled upon our rear to regain the weather-gage; and, in conſequence of this, I renewed the preparations for battle that had been ſome time diſcontinued; but having traced this ſhip forwards, as already deſcribed, there was not the ſmalleſt doubt left upon my mind of its being the Formidable.

*Q.* Did not Sir Charles mention, that though he did not at firſt ſee a blue enſign, he afterwards did, and it was a confirmation to him of its being the Formidable.

*A.* Yes.

*Q.* Does not every ſhip of the Blue diviſion hoiſt a blue enſign, as well as the Formidable?

*A.* Yes; but the Formidable alone wears a blue flag at the fore-top-maſt head.

*Q.* Do you recollect ſeeing the Robuſte, or any other ſhips of the Blue diviſion, near the Stirling Caſtle, in the morning of the 28th?

*A.* I remember to have ſeen, as I think I have ſaid before, ſhips paſs to windward of the Stirling Caſtle, after having firſt ſeen the Formidable; but no one of them paſſed ſo near me as to have particularly attracted my attention.

*Q.* Do

*Q.* Do you remember nothing at all about the Robuſte that morning?

*A.* I do not; it was impoſſible for me to know any ſhip by name at that time.

*Q.* You ſay you ſaw other ſhips paſſing. Did the ſhips that paſſed you to windward, go a-head or aſtern of you?

*A.* Going a-head.

*Q.* At what diſtance was the ſhip from you when you ſaw the blue flag and enſign flying, and as ſhe paſſed a-head before the Stirling Caſtle's beam?

*A.* I cannot ſpeak to the diſtance ſhe was from me when I firſt perceived ſhe had a blue enſign flying.

*Q.* Did you not take notice of the ſhip after day broke?

*A.* I have already anſwered that queſtion with great preciſion.

*Preſident.* Was the ſhip within hail, when ſhe paſſed you?

*A.* She was not within hail; rather leſs than half a mile, I think.

*Sir Chaloner Ogle.* Did you diſcover the flag with a glaſs or with your naked eye?

*A.* With my naked eye; and no officer I believe on board my ſhip ever doubted its being the Formidable.

*Sir H. Palliſer.* I am ſorry to have troubled the Court and the evidence with ſo many queſtions, but I thought it abſolutely neceſſary, under the idea that Sir Charles Douglas might have miſtaken ſome other ſhip for the Formidable.

Sir Charles Douglas gave into Court the names of the two perſons on board the Duke who he ſaid could likewiſe identify the Formidable in the ſame ſituation he had deſcribed her.

CAPTAIN LAFOREY, OF THE OCEAN, CALLED IN AND SWORN.

*Q.* What was the ſituation of the Blue diviſion in the morning of the 27th of July, with reſpect to the Victory?

*A.* I

*A.* I was a long way a-ſtern of the Blue diviſion; and I could not judge of their ſituation, except that they were about three miles to leeward.

*Q.* Was the Ocean one of the ſhips that chaſed that morning? *A.* No.

*Q.* How near was your ſtation in the action to the Formidable, and what were your obſervations on the conduct of the Formidable in it?

*A.* I was upon her lee-bow. I made no particular obſervations upon her conduct.

*Q.* What diſtance was the Ocean from the Formidable when the action ceaſed?

*A.* The Ocean after ſhe came out of action might be about three cables' length on the lee-bow of the Formidable.

*Q.* Did you take notice of the condition the Formidable was in?

*A.* I obſerved the Formidable's ſails to be very much tore. I took notice of no other damage that ſhe might have received.

*Q.* What time did the Ocean wear to the larboard tack, and was it by ſignal?

*A.* I wore to join my diviſion as ſoon as I could, about half paſt two. I attempted to ſtay her, which we failed in, in order to gain my ſtation, being to leeward. I did not ſee the ſignal to wear.

*Q.* Did you ſee the Formidable on the larboard tack?

*A.* No.

*Q.* Did you ſee the ſignal for the line on board the Victory in the afternoon, while on the larboard and the ſtarboard tack?

*A.* Yes; I ſaw the ſignal for the line on board the Victory while ſhe was on both tacks.

*Adm. Digby.* How far was the Formidable from the Victory, when the Victory was ſtanding on the larboard tack?

*A.* I do not recollect the diſtance, but I remember that I had been half an hour out of the action when the Victory paſſed me.

*Q.* Did you ſee the ſignal for the line repeated by the repeating frigate? *A.* I

*A.* I do not recollect I ſaw any.

*Q.* After you came out of the action, how long was it before the Ocean was in a ſituation to take her ſtation and renew the action?

*A.* I cannot ſay.

*Q.* Did you ſee the Formidable repeat the ſignal for the line? *A.* No.

*Q.* Did the Formidable obey the ſignal for the line?

*A.* No, ſhe did not bear down in the line.

*Q.* Did the Ocean bear down in conſequence of the ſignal?

*A.* The Ocean did not bear down in conſequence of the general ſignal, but ſhe bore down when her particular ſignal was made.

*Q.* At what hour?

*A.* About ſeven o'clock?

*Q.* Did there appear to be any impediment to the Formidable's bearing down into the line?

*A.* There did not appear to be any, except that her fore-top-ſail was unbent.

*Q.* What time of the afternoon did you get into your ſtation in the Vice-Admiral of the Blue's diviſion?

*A.* Between three and four o'clock.

*Q.* Did you keep your wind or edge away?

*A.* I do not recollect.

*Q.* What ſail did you carry, and at what rate did you go in the afternoon?

*A.* I do not know what rate we went at, but we carried our top-ſails, and our fore-top-ſail I think was reefed.

*Capt. Robinſon.* Were your top-ſails reefed?

*A.* Fore-top-ſail cloſe reefed; the fore-top-maſt was ſhot half through, a little above the cap. I do not recollect whether the main and mizen-top-ſails were cloſe reefed.

*Q.* What ſail did the Formidable carry, and what was her ſituation at that time?

*A.* I do not know what ſail ſhe carried, nor do I recollect any thing of her ſituation but what I have ſaid.

*Q.* What

Q. What was the poſition of the Victory with reſpect to the Ocean at ſix and ſeven o'clock, and her diſtance?

*A.* I do not recollect her poſition and diſtance at ſix o'clock; when I bore away at ſeven o'clock, I think the Victory was about four points on my lee-bow, and might be three or four miles diſtant from me—about three miles.

Q. What was your diſtance at that time from the Formidable?

*A.* I was a little away a-ſtern of her.

Q. Did you ſee the Fox come to the Formidable from the Victory?

*A.* I did not.

Q. Did you ſee any pendants thrown out on board the Victory, and at what time?

*A.* I did about ſeven o'clock.

Q. Did you ſee them repeated on board the Formidable?

*A.* No.

Q. What general ſignals were at that time flying on board the Victory?

*A.* The ſignal for the line of battle a-head, and the ſignal for ſhips to bear down.

Q. Were theſe ſignals repeated on board the Formidable?

*A.* I remember ſeeing the Blue flag at the mizen-peak, the ſignal for bearing into the Admiral's wake, but do not remember ſeeing the ſignal for the line repeated.

Q. What was your ſtation in the line of battle?

*A.* A-ſtern of the Formidable.

Q. When you quitted the Formidable's wake to go into the Victory's wake, what courſe did you ſteer?

*A.* I do not recollect; I bore down right before the wind.

Q. At what time did you get into the Victory's wake?

*A.* I do not recollect.

Q. Was

Q. Was the weather ſuch as to admit of boats paſſing and repaſſing? *A.* Yes.

Q. Was you ever within hail of the Formidable that afternoon? *A.* No.

Q. If the Vice-Admiral of the Blue had been in his ſtation at the time you got into the line, was there ſufficient time to have renewed the action?

*A.* I think there was ſufficient time to renew the action.

Q. Can you aſſign any reaſon why the action was not renewed that afternoon?

*A.* No.

Q. Was the ſail the Victory carried, from five o'clock till dark, ſuch as to prevent the Formidable from forming in the line till dark?

*A.* I think not. I ſpeak only as to appearances. I can be no judge of the ability of the Formidable.

Q. After you got into your ſtation, was the ſail the Victory carried ſuch as you could keep your ſtation in the line? *A.* Yes.

Q. Did you ſee the Formidable in her ſtation in the line on the evening of the 27th?

*A.* No.

Q. Did you ſee the diſtinguiſhing lights on board the Victory that night?

*A.* Yes, till ten o'clock.

Q. Did you ſee them on board the Formidable that night? *A.* No.

Q. Did you ſee them on board the Queen that night? *A.* No.

Q. What was the poſition of the Formidable, with reſpect to the Ocean, at break of day?

*A.* The Formidable was on the Ocean's weather-bow, about a mile.

Q. What was the poſition of the Victory, with reſpect to the Ocean at that time?

*A.* Upon my lee-bow; but I cannot recollect at what diſtance.

Q. Did you ſee the Vice-Admiral of the Red at that time?

*A.* No;

*A.* No; I do not remember ſeeing him.

*Q.* Do you recollect what number of ſhips were neareſt to you at that time?

*A.* I ſaw only the Vice-Admiral of the Blue?

*Q.* Did you ſee the Victory come out of action?

*A.* No.

CROSS-EXAMINATION BY SIR H. PALLISER.

*Q.* When you got into your ſtation in the line, what was the poſition of the headmoſt ſhip in the French line?

*A.* I placed myſelf in the line at that diſtance from the Victory, that I thought would give the ſhips ſtationed a-head of me room to form; and at that time two or three of the French ſhips were before my lee-beam.

*Preſident.* Do you think that the Formidable could not have got into her ſtation in the line at that time?

*A.* I ſaw no impediment, but that her fore-top-ſail was unbent.

*Sir H. Palliſer.* Did you make any obſervations on the Formidable while in action?

*A.* I made no obſervation on her, but that her mizen-top-ſail was a-back.

*Q.* What occurred to you upon that fact?

*A.* It occurred to me that it was kept a-back in order to have more time to fire upon the enemy.

*Q.* Do you mean to ſay in order to paſs the ſlower?

*A.* I do.

*Q.* Did you take notice of the motions of the Formidable after ſhe came out of action?

*A.* There was ſo much ſmoke a-ſtern of me, and my attention was ſo much taken up with my own ſhip, that I did not make any obſervation on the Formidable.

*Q.* While you were ſtanding on the ſtarboard tack, and the Victory was on the larboard tack, did you ſee the ſignal for the line on board the Victory till you paſſed her?

*A.* I

*A.* I ſaw the ſignal for the line on board the Victory when ſhe croſſed me to windward very near me.

*Q.* When you bore down into the wake of the Victory, did you not form a-ſtern of the Vengeance, and ſome other ſhips that you found there before you?

*A.* I formed a-head of the Vengeance, but a-ſtern of ſome other ſhips that were cloſed in the line, in the wake of the Victory.

*Adjourned till next morning ten o'clock.*

TENTH DAY. THURSDAY, APRIL 22.

This day there being a very great ſwell, and a boiſterous ſquall, which made it very dangerous and difficult for boats to go on board, it was near eleven o'clock before the Court was reſumed. Captain Stoney the next witneſs, had not been able to get on board, and therefore.

THE HON. CAP. GEO. BERKELEY, LATE LIEUTENANT of the VICTORY, but now CAPT. of the FIREBRAND Fireſhip, called in and ſworn.

*A.* Did you know any thing of the Fox being called to the Victory, in the afternoon of the 27th, and at what time?

*Q.* I did not ſee her called to the Victory, but I ſaw her when ſhe ſtood from the Victory to the Formidable, and I was told ſhe was gone with a meſſage.

*Q.* At what hour was that?

*A.* It was very near five o'clock. One Bell, the quarter-maſter told me.

*Q.* Did you obſerve her join the Formidable, and at what time?

*A.* I did not ſee her join the Formidable; I ſaw her very near to her about half an hour afterwards.

*Preſident.* Was ſhe upon the ſame tack with the Formidable, at the time you ſpeak of?

*A.* No; ſhe had the Formidable open to windward of her.

*Q.* Did you ſee the Formidable at the cloſe of the evening of the 27th, and what was her ſituation with reſpect to the Victory at that time? *A.* Yes,

*A.* Yes, at different times towards the close of the evening she was with her head the same way, right to windward of us, rather abaft the beam, I should suppose about two miles and a half, or three miles distant.

*Q.* What watch had you in the night after the action?

*A.* The mid watch.

*Q.* What sail had the Victory out at the time of your watch, and at what rate did she go?

*A.* She had treble reefed fore and main-top-sail, and fore-sail. I am not clear whether her mizen-stay-sail was set or not.

*Q.* Did she keep her wind?

*A.* She carried her helm a-lee almost the whole watch, and she went at the rate of a knot and a half, and I ordered the mate to put down two knots at times, because she altered her helm.

*Q.* When you last saw the Formidable on the evening of the 27th, how did the headmost ships of the enemy then bear with respect to the Victory?

*A.* As near as I can remember, at the close of the day, the fifth or sixth ship of the enemy I reckoned to be a-breast of the Victory. I cannot judge of the headmost.

*Q.* Did you see the Formidable at daybreak in the morning of the 28th, and what was her position in respect to the Victory?

*A.* I did not see the Formidable myself, for I was busy in making signals.

*Ad. Digby.* did you see the Queen at daylight that morning?

*A.* I did not.

*President.* Did the Victory carry her lights during your watch.

*A.* She did, and an additional one at the bowsprit end.

*Cap. Duncan.* Was the fleet in a tolerable line at daybreak of the 28th.

*A.* As many of them as were formed appeared as well connected as they could be after the night.

Q. Are we from that to conclude, that there were ſome or many of them irregular?

*A.* There were ſome ſhips a-head upon our ſtarboard bow which ſeemed not to be in the line, but who they were I cannot ſay.

*Preſident.* What weather had you during your watch?

*A.* Much the ſame as before; at times thick, and at times it cleared up, ſo that I could ſee the lights that were pointed out to me as the French lights.

CROSS-EXAMINATION BY SIR HUGH PALLISER.

Q. In which part of the Victory was you ſtanding when you ſaw the Fox go towards the Formidable.

*A.* After I had ſeen my quarters ready for action again, I came upon the quarter-deck, when one of the Lieutenants took me by the arm, and led me to windward, ſhewed me the Fox, and told me ſhe was gone with a trimming meſſage to the Vice-Admiral of the Blue. I got upon the fore-maſt gun to look over the barricado, and this converſation occaſioned me to aſk what o'clock it was.

Q. Did you get on the gun to look over the barricado in order to get ſight of the Fox?

*A.* Yes, Sir; there was no ſeeing without it, becauſe we were barricaded ſo high.

Q. Did the Fox paſs to windward or to leeward of the ſhips a-ſtern of the Victory at that time?

*A.* I cannot ſay.

Q. How many ſhips were a-ſtern of the Victory at that time?

*A.* I cannot ſpeak to that from my own knowledge.

Q. What was the ſtation of the Arethuſa at that time?

*A.* I cannot ſay.

Q. Did you never ſee the repeating frigate to windward of you that afternoon?

*A.* I did ſee her that afternoon; but the particular time when the Fox went to you I cannot charge my memory with.

Q. When

*Q.* When you did ſee her, was ſhe upon the weather-beam in her ſtation about three miles to windward, or how?

*A.* She was rather before the weather-beam.

*Q.* If the Formidable was upon your weather-beam, muſt ſhe not be near the Arethuſa.

*A.* I ſuppoſe ſhe muſt; but I do not know the particular time when I ſaw the Arethuſa.

*Withdrew.*

## MR. JOHN MADGSHON, MASTER OF THE VICTORY.

Being ſhewn his log-book, he ſwore to its authenticity, pointing out the ſmall addition that he had made in overhauling the remarks, of the ſignal for wearing being made at three o'clock.

*Q.* What were the different times the Victory was wore in the afternoon of the 27th of July after the action?

*A.* At half paſt one we made the ſignal, and wore to the larboard tack.

*Q.* Did you ſee the Formidable at that time?

*A.* I ſaw her at that time juſt coming through the ſmoke.

*Q.* At what diſtance was ſhe then from you?

*A.* A mile and a half, or near two miles.

*Q.* How was the Formidable's head at that time?

*A.* Upon the ſtarboard tack.

*Q.* Did you ſee her upon the larboard tack after the action? *A.* No.

*Q.* Go on to give an account of the different times of the Victory's wearing that afternoon?

*A.* At three o'clock ſhe wore to the ſtarboard tack.

*Q.* Juſt before you came to the ſtarboard tack, cloſe upon a wind, did you ſee the Formidable, and how did ſhe wear in reſpect to the Victory, and at what diſtance?

*A.* The Victory did not go cloſe upon a wind after wearing?

*Q.* Deſcribe how ſhe ſteered?

*A.* We ſteered to join the ſhips on the S.S.E. about

two points from the wind. I did not ſee the Formidable.

*Ad. Digby.* Did you ſee the Formidable when ſhe paſſed the Victory, before you wore the ſecond time?

*A.* I did,

*Q.* How long was that before you wore the ſecond time?

*A.* I do not recollect how long it was before. I ſuppoſe it muſt be near two o'clock.

*Q.* What was the poſition at that time?

*A.* She was then ſtanding to the ſouthward, on the ſtarboard tack.

*Q.* At what hour did you haul your wind cloſe upon the ſtarboard tack?

*A.* About a quarter after ſeven.

*Capt. Peyton.* Did you not haul your wind cloſe before that time?

*A.* I believe not.

*Q.* Did you not alter your courſe more weatherly about five o'clock?

*A.* The ſhip had very little way, ſhe might have altered her courſe and fallen off.

*Q.* After the Victory wore to the ſouthward, while ſhe edged away from the wind, what ſail did ſhe carry, and how many knots did ſhe go?

*A.* I muſt refer to the log; ſhe edged away from the wind, ſhe was under double-reefed top-ſails and fore-ſail, going two knots. In wearing we bent a new main-top-ſail. I do not recollect that we had any ſtay-ſails ſet.

*Q.* Did you increaſe your diſtance from the Formidable while you edged away from the wind?

*A.* After we wore upon the ſtarboard tack I did not ſee the Formidable till between four and five o'clock.

*Q.* How ſoon after did you ſee her to take notice of her.

*A.* Between four and five o'clock.

*Q.* What was her poſition and diſtance with reſpect to the Victory at that time?

*A.* She was on the Victory's ſtarboard quarter about three points, and near three miles diſtant.

*Q.*

Q. At what time did the Victory join thoſe ſhips ſhe edged away for?

*A.* Between five and ſix o'clock.

Q. Did the Victory after that continue edging away, or did ſhe haul her wind?

*A.* I believe I have before ſaid we did not haul our wind till a quarter after ſeven.

*C. Robinſon.* After you had hauled your wind at a quarter after ſeven, did you keep cloſe to the wind all that night?

*A.* We did.

Q. Was you upon deck at the cloſe of the evening after the action?

*A.* I was.

Q. Did you ſee the Formidable at the cloſe of the evening, and what was her poſition with reſpect to the Victory at that time?

*A.* Between ſeven and eight I ſaw the Formidable; the diſtance was near the ſame as before, but ſhe was more towards the beam, about five points upon the quarter.

Q. Was you on deck at daybreak next morning?

*A.* I was upon deck about four o'clock.

Q. What ſail was the Formidable under at the different times you ſaw her?

*A.* Between five and ſix, under main-mizen-top-ſail and fore-ſail; and between ſeven and eight ſhe bent her fore-top-ſail, and hauled one clue of her main-top-ſail up; the fore-top-ſail was ſheeted but not up, the main-top-ſail was ſetting, but not ſet.

Q. Did you take notice whether ſhe had any ſtay-ſails ſet?

*A.* I did not.

Q. At the two different periods you took notice of her did it appear to you that ſhe was going from the wind, or cloſe hauled?

*A.* She appeared to me to be cloſe hauled.

Q. Was the Victory's log hove that afternoon or evening, to your knowledge?

*A.* I do not recollect it was.

*Q.* Was the log marked by the calculations of the officers of the watch, or by heaving the log regularly?

*A.* I cannot tell. I took it from the log-board.

*Q.* What weather had you that afternoon?

*A.* Squally, but it did not blow hard.

*Q.* Was you upon deck at break of day on the morning of the 28th?

*A.* I was on the deck at four o'clock.

*Q.* Did you ſee the Formidable in the morning of the 28th?

*A.* I did not.

*Sir Chal. Ogle.* Did you look for her?

*A.* I did not, being buſy in fiſhing the maſts, and other duty on board the Victory.

*Q.* How did the headmoſt of the French fleet bear in the evening of the 27th of July, with reſpect to the Victory?

*A.* The third ſhip from the van was a little abaft the Victory's beam, near or about two miles diſtance.

*Q.* Did the French fleet appear in a line of battle at that time?

*A.* They were.

*C. Robinſon.* In what poſition did the Britiſh fleet appear to you at that period?

*A.* The ſhips in the van were very near formed before eight o'clock. The centre was formed, and three ſhips a-ſtern of the Victory were formed; a fourth at a greater diſtance; a number of the rear diviſion were then upon the ſtarboard quarter, not in our wake.

*Q.* What ſail was the Victory under when you came upon deck in the morning of the 28th, and was ſhe to the wind?

*A.* Under treble-reefed top-ſails and fore-ſail, cloſe to the wind, the mizen-top-ſail ſetting. We always made it a point to have our mizen handed every night that our lights might be ſeen.

CROSS-EXAMINATION BY SIR H. PALLISER.

Q. When was the addition made to the log-book, in noting the time of her wearing?

*A.* Before Mr. Keppel's Court-Martial was begun.

Q. How long before that?

*A.* After I heard that his trial was to come on, in conning my remarks over for the day, I found I had made that omiſſion in taking it from the log.

Q. Pray, are the courſes and rates of ſailing regularly marked in the log-book?

*A.* They are in my log-book, as I took them from the board, and a ſlate that I kept for that purpoſe on the quarter-deck.

Q. Did the Victory lay to any part of the afternoon of the 27th?

*A.* I do not recollect ſhe did, but I remarked her as laying to, becauſe I could not otherwiſe account her ſteerage.

Q. Does it appear by the log-book that the Victory was laying to from one to five o'clock?

*A.* It does.

Q. Why could you not account for her courſes and ſteering at that time, as well as in the preceding and following hours?

*A.* Becauſe we could not get our ſails properly trimmed, from the damage we had received in the action. We never got them all full at once; ſome were ſhaking, and ſhe had very little head way.

Q. What was the ſituation of the ſhips of the centre diviſion a-head of the Victory at eight o'clock, the time you ſpoke of?

*A.* I did not particularly notice what ſhips they were, there were ſome ſhips formed a-head of the Victory.

Q. Do you know that ſome of them were out of their ſtations?

*A.* I do not of any particular ſhips. There were ſome ſhips not quite in their ſtations, but I do not know their names.

*Capt. Colpoys.* Who were the officers of watch on board the Victory who marked the log-book that evening between one and five to the period of laying to?

*A.* One of them is made a maſter; there was only one mate on board who marked the log.

*Capt. Colpoys.* I am apt to think the log-book was lumped as is but too frequently the caſe, which is what I want to be ſatisfied about.

It was granted by the maſter that the Victory's log was lumped.

The Court then ordered the log-books of the Prince George, Queen, Valiant, and Berwick, to be procured and delivered in.

*Withdrew.*

CAPTAIN STONEY, LATE LIEUTENANT OF THE VICTORY, CALLED IN AND SWORN.

Q. Do you remember the Fox being called to the Victory in the afternoon of the 27th?

*A.* Being quartered on the lower deck, I cannot ſpeak to time; but I remember her being called.

Q. Did you ſee her go to the Formidable?

*A.* While I was making a report to Captain Faulkner on the quarter-deck, I ſaw her wear under the Victory's lee-quarter, hauled her tacks aboard, ſet her ſtays and top-gallants trimmed cloſe to the wind, but did not lie up ſo as to fetch the Vice-Admiral of the Blue.

*Sir Chal. Ogle.* Could you obſerve that ſhe weathered any of the ſhips that were a-ſtern of the Victory?

*A.* No, ſhe did not weather any of the ſhips that were then in our wake.

Q. What ſhips were then in your wake?

*A.* Three; the Prince George, Bienfaiſant, and Foudroyant.

Q. Was the Victory cloſe upon a wind at that time?

*A.* She was.

Q. Did

*Q.* Did you ſee the Formidable in the cloſe of the evening, and what was her poſition?

*A.* She was ſo broad upon the Victory's weather-quarter, that I could not ſee her out of the Victory's ſtern weather-port.

*Q.* In the courſe of your watch, what was the poſition of the Formidable?

*A.* About two points abaft the weather-beam, and I fancy about three miles, but diſtances may be erroneous.

*Q.* What ſail had the Victory out at the time of your watch, and at what rate did ſhe then go?

*A.* Fore-ſail, treble-reefed, fore and main-top-ſail, mizen-top-ſail furled, and I think the mizen-top-ſail was ſet about ſeven. At about ſeven bells, the mizen-maſt being fiſhed, the mizen-ſheet was hauled back, and we went about two, or two and a half at moſt.

*Capt. Peyton.* Did you mark the log during your watch?

*A.* Aſſuredly I did.

*Q.* Did you do ſo any time in the day?

*A.* I always did ſo in my watch; all that day from eight in the morning I was at my quarters.

*Q.* At the cloſe of the evening, what was the poſition of the headmoſt ſhip of the enemy?

*A.* I ſhould ſuppoſe the headmoſt ſhip muſt be nearly a-breaſt the centre of the van diviſion, between two and three miles to leeward.

*Q.* Did you ſee the Formidable in action, or immediately after?

*A.* I ſaw her in action.

*Q.* How long was it after the Victory came out of action that you firſt ſaw the Formidable?

*Q.* A very ſhort time after.

*Preſident.* Did you ſee the Formidable on the larboard tack?

*A.* Never, after the action.

Not croſs examined.

*Withdrew.*

THE

THE HON. LIEUT. THOMAS LUMLEY, OF THE ROBUSTE, CALLED IN AND SWORN.

Q. Was the Robuſte at any time in the afternoon of the 27th of July within hail of the Formidable?

*A.* Not within my recollection.

Q. What time was the Robuſte refitted after the action, and at what time did ſhe take her ſtation in the line?

*A.* I cannot ſay exactly, but I ſuppoſe it was near ſun-ſet; ſhe was not at that time perfectly refitted.

Q. How long was the Robuſte in running down into her ſtation, and how much from the wind did ſhe go?

*A.* I cannot charge my memory with that.

Q. Before you wore away to run into your ſtation what diſtance was you from the Formidable?

*A.* I did not ſee her; I took no notice of her.

Q. Did you ſee diſtinguiſhing lights on board the Formidable in the night of the 27th?

*A.* I was upon deck but one hour; I ſaw no lights on board the ſhip that had been pointed out to me by the officer I relieved, as the Formidable.

Q. Did you afterwards diſcover that ſhip to be the Formidable?

*A.* I did not obſerve; the firſt Lieutenant, who came upon deck, went aft upon the poop to look at her; I ſtaid on the quarter-deck, the ſhip pointed out to me was a-ſtern.

Q. What ſhip was next to you?

*A.* The Queen was upon our larboard bow, within hail.

Q. What diſtance do you imagine the ſhip was from you that was pointed out to be the Formidable?

*A.* I ſhould ſuppoſe a quarter of a mile, or ſomewhat more, but I cannot ſpeak poſitively.

Q. What was the poſition of the Robuſte with reſpect to the Victory at daylight?

*A.* I cannot anſwer to that, as I remained on the quarter-deck, and the Robuſte being got into the van I ſuppoſed the Victory to be a-ſtern.

Q. Did

Q. Did you ſee diſtinguiſhing lights on board the Victory any part of the night?

*A.* During the hour I was upon deck I took no notice of any ſhip but the Vice-Admiral of the Red to leeward, and the ſhip pointed out to me as the Formidable a-ſtern. I ſaw diſtinguiſhing lights on board the Queen, but I did not particularly notice how many.

CROSS-EXAMINATION BY SIR H. PALLISER.

Q. What hour was you upon deck?

*A.* From three to four o'clock.

Q. Would it have been poſſible to have ſeen any diſtinguiſhing lights on board the ſhip a-ſtern if there had been any?

*A.* Certainly not, ſuppoſing theſe diſtinguiſhing lights to be in the uſual part of the ſhip.

*Adm. Digby.* Did not you take the Queen for the Victory?

*A.* No, Sir.

*Withdrew.*

The Court was here cleared to debate on the propriety of calling Captain Beazley of the Formidable to give evidence for the Crown.

When ſtrangers were re-admitted, the Judge Advocate read a paper from Sir Hugh Palliſer, ſtating the great impropriety of calling Captain Beazley in ſupport of the proſecution, ſince he was the principal witneſs in his defence.

But the Court reſolved that they could not diſpenſe with the evidence of Captain Beazley.

CAPT. BEAZLEY OF THE FORMIDABLE CALLED IN AND SWORN.

Q. Relate to the Court the ſituation of the Blue diviſion in the morning of the 27th of July in reſpect to the Admiral?

*A.* On the Victory's lee-bow, and a-head withal.

The

The Formidable was leſs than a mile to leeward, and a mile a-head of the Victory.

*Q.* Give an account of the proceedings of the Vice-Admiral from that time till the action began, and when the firing ceaſed.

*A.* The Vice-Admiral ſtood on, with the fleet on the larboard-tack, tacked with them about ten o'clock, and opened her fire on the enemy about twelve o'clock; ſhe engaged with the ſhip a-head of the French centre, within muſket ſhot, and paſſed many of the enemy within piſtol-ſhot. She engaged clearly with fourteen ſhips; and received the fire from nine, before ſhe returned her fire.

*Q.* What was the behaviour of the Vice-Admiral of the Blue during the action?

*A.* Very gallant and ſpirited.

*Q.* What was the condition of the Formidable after the action?

*A.* A perfect wreck, except that of her maſts and yards coming over the ſides-

*Q.* How was the Engliſh fleet ſituated when you came out of the action; and what were the ſhips neareſt to you?

*A.* The firſt ſhip I obſerved was the Vice-Admiral's of the Red, who was about a mile a-head on the larboard tack, to windward; and the Admiral, with the ſhips of the centre, were two miles directly a-head of us.

*Q.* How ſoon after the Formidable came out of action, did ſhe wear?

*A.* Immediately after.

*Q.* What was the ſituation of the French fleet when the Formidable wore, and laid her head towards the enemy?

*A.* The rear of the French line ſeemed to be in confuſion; and directly as we got round, three of the enemy began to wear to get upon the other tack to meet the Formidable.

*Q.* Did you ſee the ſignal for the line on board the Victory, or the repeating frigate, when the Victory was on the larboard tack?

*A.* No;

*A.* No; I did not.

*Q.* How ſoon after did ſhe wear on the larboard tack?

*A.* About half an hour after.

*Q.* Did the Victory and Formidable paſs each other?

*A.* They did.

*Sir Ch. Ogle.* What appeared to you to be the Vice-Admiral's reaſon for wearing to the larboard tack?

*A.* To be ready to renew the action when the Admiral ſhould come up.

*Sir Ch. Ogle.* And what appeared to you to be the reaſon for wearing back again to the ſtarboard tack?

*A.* The ſignal for battle being hauled down, and the Vice-Admiral of the Red's ſlackening ſail; there being no ſhips near, and the Formidable being diſabled, the Vice-Admiral of the Blue thought it neceſſary to wear back again to meet the fleet, in order to avoid any danger that might happen from the enemy's pointing to us.

*Q.* What time did you ſee the ſignal for battle hauled down on board the Victory?

*A.* I did not ſee it hauled down on board the Victory, but on board the Vice-Admiral of the Red, who had repeated it. I cannot ſpeak to time, but it was before we wore.

*Q.* What was the firſt time that you ſaw the ſignal for the line when it was flying while on the ſtarboard tack?

*A.* Not till we were a-breaſt of the Victory as we paſſed her.

*Q.* Was that repeated on board the Formidable?

*A.* It was ſoon after the Victory wore under the Formidable's ſtern, and paſſed her again to leeward.

*Q.* How ſoon did the Victory wear after paſſing the Formidable?

*A.* Immediately.

*Q.* When the Victory paſſed you on the ſtarboard tack, was the ſignal for the line flying on board her?

*A.* I think it was.

*Q.* Was it repeated on board the Formidable at that time, and did ſhe obey it? *A.* At

*A.* At that time we were ſo near the Victory that I apprehend from her going large we were nearly in a line with her. After ſhe had paſſed us, ſhe appeared to me to go two points from the wind, which put us in her wake, and we were the next ſhip to her.

*Q.* What ſail did the Victory carry at that time?

*A.* Top-ſails and fore-ſail; the main-top-ſail was on the cap. Whether they had a reef or no, I cannot recollect. The fore and mizen-top-ſail were hoiſted, and fore-ſail ſet.

*Q.* Did the ſails of the Victory ſeem to be much ſhattered?

*A.* I do not recollect immediately noticing them.

*Q.* What ſail was the Formidable under at that time?

*A.* Fore-ſail, mizen-top-ſail on the cap; fore-top-ſail-yard was upon the cap; fore-top-ſail being cut away, all but a few ribbands left of the canvas which hung upon the yard. Her main-top-ſail hung by ſlings, two reefs reached down, and her ſails were all ſhot. *The Court adjourned.*

## THE ELEVENTH DAY, FRIDAY, APRIL 23th.

*The Court was reſumed.*

*Captain Beazley's evidence continued.*

*J. Adv.* Sir Hugh Palliſer has received a letter, which I have in my hand, from Sir Robert Harland, requeſting his ſtay at Portſmouth might be diſpenſed with for a day or two, he being under the neceſſity of going to town on very urgent buſineſs; but that he had left his addreſs with him, and would return when ever he ſhould receive a ſummons for that purpoſe.

The Court and Priſoner conſented to the requeſt.

*Q.* Did you make any efforts at that time to get into your ſtation in the line, at the time of the Admiral's wearing to the ſtarboard tack.

*A.* Yes, we did.

*Q.* What were thoſe efforts?

*A.* Preparing to ſet the main-ſail, ſplicing the tacks and

and ſheets that were ſhot away on both ſides, and reefing new braces for the other yards, that were all ſhot away. That was the firſt object before we knotted the ſhrouds, and got the maſts properly ſecured, to make more ſail.

*Q.* Was the Victory going large at that time?

*A.* She was going two points from the wind, and was almoſt right a-head.

*Q.* Was the Formidable going large, or did ſhe keep her wind?

*A.* Following the Admiral, keeping him rather to leeward of the bowſprit.

*Q.* In what time was the main-ſail ſet?

*A.* In the courſe of fifteen minutes, or half an hour after we began to ſplice the tacks and ſheets.

*Q.* Was the ſignal for the line of battle at this time flying on board the Formidable?

*A.* I *think* it was. It was repeated immediately after the Victory wore to the ſtarboard.

*Q.* Was every other effort made uſe of by which the Formidable might have kept her ſtation in the line, after the main-ſail was ſet?

*A.* Yes, every other effort was made uſe of; officers and ſhip's company were employed to refit and repair damages till ten o'clock at night.

*Q.* Did Sir Hugh Palliſer imagine that he was in the line all the afternoon?

*A.* No, Sir, not all the afternoon by any means. When the Vice-Admiral of the Red, and the ſhips that were with him to windward, bore down to form a-ſtern of the Admiral, we ſteered a little to windward to give him room to form; and when that diviſion made ſail a-head, it left a diſtance between the Admiral and us of about a mile and a half a-ſtern of the Admiral, which was rather out of our ſtation in the line.

*Q.* Did the Victory carry ſo much ſail as to prevent the Formidable from keeping in her ſtation?

*A.* Yes; ſhe increaſed her diſtance from the inſtant that ſhe bore away to windward till dark at night.

*Q.* Did

Q. Did the Victory in general outſail the Formidable with the ſame ſail?

*A.* Yes, in all ſtations, and in all modes of ſailing.

*Ad. Digby.* At what time do you think it was that Sir Hugh Palliſer was firſt acquainted that he was out of his ſtation in the line?

*A.* At the inſtant that it happened; he was upon deck himſelf, and gave directions for the ſhips ſteering to windward. I cannot ſay what time of the day it was, my attention was taken up with the repairs of the ſhip.

Q. How near was the Queen to the Formidable at that time?

*A.* I cannot recollect preciſely.

Q. At what time did the Red diviſion quit that poſition, and take its ſtation a-head in the line?

*A.* I cannot ſay what time I perceived the manœuvre.

Q. Was the ſignal for the line, or any other general ſignal, flying on board the Victory at that time?

*A.* I believe the ſignal for the line of battle was flying; and to the beſt of my recollection it was ſo on board the Formidable.

*Ad. Digby.* Did Sir Hugh Palliſer at any time order the ſignal for the line to be hauled down on board the Formidable?

*A.* Never, to my knowledge.

Q. Did you receive any orders from Sir Hugh Palliſer in conſequence of your being out of your ſtation, and what were they?

*A.* My general orders were, to attend ſolely to the refitting of the ſhip, in which all the officers and ſhip's company aſſiſted me.

Q. After you had hauled up, did you bear away again, and how ſoon?

*A.* Immediately after the Red diviſion had formed a-ſtern of the Victory, we bore away again, and, *to the beſt of my recollection*, we kept about a point, or a point and a half, from the wind; aad as I ſtood in the lee-gangway, the fore-ſhrouds were in the wake, and we continued ſo till night.

*Capt.*

*Capt. Robinſon.* From the ſituation in which the Formidable was in, was it poſſible for the Victory to ſee any general ſignals that were flying on board her in that time?

*A.* I ſhould think not; not thoſe that were flying in the mizen-peak.

*Q.* Did you ſee the ſignals for ſhips to wear down into the Admiral's wake, and at what time?

*A.* I did, between ſix and ſeven, or at ſeven o'clock; I ſaw particular ſhips pendants, which were immediately repeated on board the Formidable.

*Preſident.* Was the general ſignal to bear down made at any time in the Victory before the pendants?

*A.* I do not remember ſeeing the general ſignal.

*Sir Chal. Ogle.* Was there any perſon appointed on board the Formidable to obſerve and note the ſignals that you made?

*A.* There were two midſhipmen appointed to take minutes of ſignals, *but I do not recollect whether they had an opportunity of minuting them or not.*

*Capt. Bayne.* When you repeated the ſignal for bearing down, was it hoiſted beneath the ſignal for the line, or was the ſignal for the line hauled down, and the other ſignal hoiſted at the mizen-peak?

*A.* I am not poſitive. To the beſt of my recollection, and as well as I can charge my memory, it was hoiſted beneath the ſignal for the line; and I am poſitive it continued ſo till dark.

*Capt. Colpoys.* Did the Vice-Admiral obey that ſignal?

*A.* No. He kept the Admiral open in the poſition I have before ſtated, endeavouring to recover the length of his ſtation before he went down.

*Capt. Robinſon.* Was the Formidable, at the time you now ſpeak of, in a condition to go down into her ſtation, with reſpect to her ſails and rigging?

*A.* No; by no means in the world. Neither to go down into her ſtation, or to keep her diſtance between two ſhips in the line.

*Capt. Robinſon.* What ſail was the Formidable under at this time?

*A.* Under the ſail I have before deſcribed; that is, preparing to bend her fore-top-ſail; the fore-maſt was not at that time properly ſecured to admit of bending a fore-top-ſail, or to make more ſail on the fore-maſt.

*Captain Colpoys.* What! had ſhe made no alteration of ſail from the time firſt mentioned, to ſeven o'clock, the period laſt mentioned; that is, about four hours?

*A.* No, ſhe had not; ſhe had no other ſail to ſet, the jib and ſtay being all ſhot away and gone overboard.

*Capt. Colpoys.* Was there not time in three hours and a half, or four hours, to have brought on more ſail?

*A.* No; not in the condition the maſts and yards were in after coming out of the action.

*Capt. Colpoys.* Don't you think a ſhip going two knots and upwards, may be able to keep her ſtation between two ſhips of the line?

*A.* No, by no means, when the Admiral went faſter than the Formidable, which was the caſe all the afternoon, if the log-book of the Formidable is marked right, which I cannot pretend to anſwer to, as I neither have the log, nor know who did it.

*Capt. Robinſon.* How was the wind and weather in the courſe of the afternoon?

*A.* Freſh and ſqually at times, and cloudy towards the cloſe of the evening.

*Court.* Did the Fox frigate come to the Formidable that afternoon?

*A.* The Fox cheered the Formidable, to the beſt of my recollection, rather before ſun-ſet; I did not ſee her till ſhe cheered. The pendants for particular ſhips were repeated before ſhe came to us.

*Q.* What time did the ſun ſet then?

*A.* The ſun ſet about half paſt ſeven at that time, in the latitude of Uſhant.

*Q.* Was any meſſage delivered at that time by the Fox?

*A.* None that I heard; my ſituation would not permit me to hear what paſſed, had I even ſeen her before ſhe cheered.

*Q.* In what part of the ſhip were you at that time?

*A.* On the fore-part of the fore-caſtle, quite forward.

*Q.* How long had you been there?

*A.* I quitted the quarter-deck immediately after the pendants for the particular ſhips of the Vice-Admiral of the Blue's diviſion were thrown out. I then went forward on the fore-caſtle to give directions about the fore-maſt being ſecured, and as ſoon as I had done that, I heard the cheer from the Fox.

Captain Beazley requeſted that an inconſiſtency might be corrected, which he had been guilty of, in anſwering a queſtion reſpecting the repetition of the ſignal for bearing down. He had ſaid he was not poſitive whether it was hoiſted, but he was poſitive it flew till night. He begged the firſt not poſitive might be taken out.

*Q.* Do you know that any anſwer was returned to the meſſage brought by the Fox?

*A.* I neither heard the meſſage nor the anſwer.

*Preſident.* Did nobody inform you that the Fox was making towards the Formidable?

*A.* No.

*Q.* How did the Formidable ſteer reſpecting the Victory after the Fox came to her?

*A.* Kept her open under her lee, as before deſcribed.

*Q.* Did the Vice-Admiral expreſs his uneaſineſs to you at any time, at not being able to obey the ſignal?

*A.* Frequently, and was very eager.

*Q.* You have deſcribed the Formidable to be a perfect wreck; in what condition were your boats?

*A.* We had but three left at that time, having loſt three, and one of them (the barge) had two or three large holes through it.

*Preſident.* Was the weather ſuch that boats might paſs from one ſhip to another?

*A.* Yes, I ſaw one boat paſs from the repeating frigate to the Victory. I think in the evening a boat might have paſſed.

*Capt. Robinſon.* Was your yard tackles in ſuch a condition as to admit of boats being hoiſted out, and were the yards ſecure.

*A.* No, they were not, till next morning.

*Sir Chal. Ogle.* Do you mean, Sir, that there was no poſſibility of getting a boat out?

*A.* No, by no means; but I think we could not have done it without bringing to.

*Capt. Duncan.* Did the Vice-Admiral in the courſe of the afternoon propoſe getting a boat out?

*A.* No.

*Captain Duncan.* Or did he expreſs to you a wiſh of ſhifting his flag on board of any other ſhip?

*A.* No, he never expreſſed ſuch a wiſh.

*Q.* What courſe muſt the Formidable have ſteered at five o'clock, to have got into her ſtation?

*A.* At five o'clock ſhe was a-ſtern of her ſtation, but I cannot recollect time.

*Q.* How many ſhips a-ſtern of the Victory was the Formidable's ſtation in the line?

*A.* She was the ninth ſhip a-ſtern, eight being between her and the Victory?

*Q.* What was the neareſt ſhip to the Formidable a-ſtern at five o'clock?

*A.* I do not recollect making any obſervation of any one ſhip or ſhips a-ſtern at that time.

*Q.* Do you remember the Ocean's bearing down into the Victory's wake?

*A.* I do not recollect that circumſtance.

*Q.* Was there no ſhips at that time near to the Formidable?

*A.* There were two ſhips to windward; I think they were the Egmont and America.

*Capt. Colpoys.* In conſequence of the ſignal for ſhips to bear down, did any ſhip or ſhips bear down?

*A.* I

*A.* I cannot ſpeak from my own knowledge that I obſerved any did, my attention was taken up in getting my fore-top-ſail ſet.

*Q.* When was the fore-top-ſail ſet?

*A.* Soon after the Fox cheered us, between that and dark.

*Sir Chal. Ogle.* Did you then bear away to get into your ſtation?

*A.* No, we did not; we continued to keep the Victory open in our lee-quarter; we were a mile to windward, and three miles a-ſtern, and if I may be allowed to have any judgment, that was the moſt proper courſe to get into our ſtation; it ſtruck me forcibly ſo at the time.

*Capt. Colpoys.* Do you think it was impoſſible to have got the Formidable into a ſtate to have gone down into her ſtation by ſeven o'clock?

*A.* I do.

*Q.* Do you think the Ocean could always outſail the Formidable?

*A.* I think ſhe always could.

*Q.* What was the poſition of the Red diviſion at ſeven o'clock with reſpect to the Victory?

*A.* They were a-head of the Victory, formed or forming.

*Capt. Colpoys.* Was the centre diviſion formed at that time in line of battle?

*A.* I do not think the whole diviſion was; I cannot ſpeak to the number of ſhips.

*Q.* How many ſhips of the Vice-Admiral of the Blue's diviſion were in their ſtation at that time?

*A.* I do not know.

*Q.* Do you recollect the Red diviſion paſſing from the rear to their ſtation in the van?

*A.* Yes, I do.

*Capt. Kempenfelt.* Juſt before the Red diviſion left the ſtern of the Victory to go a-head, what was the poſition of the Queen with reſpect to the Formidable?

*A.* Rather before the lee-beam, about half a mile diſtant.

*Q.* Was the French fleet formed in line at ſeven o'clock?

*A.* They appeared ſo to me.

*Q.* What was the ſituation of the headmoſt ſhip of the enemy with reſpect to the Formidable?

*A.* Their van was before our lee-beam, between us and the Victory, about three miles from us.

*Q.* How many points were they open from the Victory's ſtern?

*A.* I cannot judge at dark; the headmoſt ſhip ſeemed to me to be a-breaſt of the Victory.

*Q.* What became of the Formidable after dark?

*A.* She kept the ſame courſe after the Victory till towards two o'clock, and then ſhe bore up and took her ſtation a-ſtern of the Victory in the line before the day was fairly open.

*Ad. Digby.* Were the courſes that you ſteered in the afternoon and the night, directed by the Vice-Admiral particularly, or were his directions in general to get into her ſtation?

*A.* By the Vice-Admiral's own directions.

*Q.* To you?

*A.* To me; and when I left the deck, the ſame directions were given to the officers who had charge on the deck; but I was never off the deck fifteen minutes at any time, and that merely to refreſh myſelf.

*Q.* What were theſe directions?

*A.* To keep the Admiral's lights open to our lee-bow; and ſhould we near the lights, to acquaint the Vice-Admiral.

*C. Robinſon.* Was you ever that night a-head of the Victory and a-breaſt of the van diviſion?

*A.* No, never; we were never a-head of the Victory, nor ever a-breaſt of the van after the Victory paſſed us in wearing to the ſtarboard tack, in the afternoon, and we were in our ſtation in the line a-ſtern before day dawn. The Ocean, I think, was the next ſhip to us; and there was one of the ſhips of the enemy on our lee-quarter; that I am certain of.

*Q.* Did you ſee the Victory's lights all night?

*A.* Yes,

*A.* Yes, I ſaw her three ſtern lights, and her top-lights all night.

*Q.* Were the Formidable's lights burning all night?

*A.* In my evidence on the former trial I was lead to ſay there were no lights, from the difficulty that I know we found in preparing the top-light in the beginning of the evening, which was wounded; but on the approach of the preſent trial, I made more particular inquiry, and I find there are officers in the ſhip who can ſpeak more clearly to that point than myſelf. As to the ſtern lights, on my oath I can venture to ſay they were burning the whole night.

*Ad. Digby.* Were any orders given by the Vice-Admiral relative to lights?

*A.* The Vice-Admiral ſaid to me, conſidering the difficulty of keeping a light burning, it did not ſignify, as it might prevent two ſhips a-weather of us from going down into the line. He perſiſted in ſaying it did not ſignify.

*Q.* What do you mean by the difficulties of keeping a light burning?

*A.* The candle would not burn from the ſhot holes that were in it, notwithſtanding we put canvaſs and pieces of hammock over it.

*Q.* Did you give any directions to the officer of the watch in conſequence of this?

*A.* He was preſent and heard the converſation. I do not remember who the officer was, or whether there was one or two.

*Capt. Colpoys.* I think you ſay the Formidable was not fit to go into her ſtation; how much was ſhe obliged to alter her courſe?

*A.* She went very much large, with the wind rather on the ſtarboard than on the larboard quarter, being at that time ſhot well up with the Admiral.

*Q.* How was the Formidable manned?

*A.* Far from being a bad manned ſhip.

*Q.* What was the diſpoſition of the men after the action?

*A.* Sober, orderly, and very attentive to their duty.

Q. Was there not a frigate ſtationed to attend the Blue diviſion on the 27th?

*A.* The Milford was certainly ſtationed to attend us, but ſhe did not care particularly to attend us that afternoon after the battle.

Q. Did the Vice-Admiral of the Blue ever call the frigate to him that afternoon by ſignal?

*A.* No, not that afternoon.

Q. Was the Formidable in ſuch a condition at any time in the afternoon as not to be manageable?

*A.* She was manageable to wear, but by no means manageable to get up into her ſtation in the line, or to preſerve her diſtance between two ſhips in the line.

*Capt. Linzee.* Was the Ocean, or any other ſhip, in ſuch a ſituation in the afternoon, as that the Vice-Admiral could have ſhifted his flag on board her with convenience?

*A.* I do not recollect the particular ſituation of the Ocean, or of any other ſhip near us, in the afternoon, to which it might be done with convenience.

*Adm. Digby.* Did it occur to you at the time, that it would be a right meaſure?

*A.* By no means, it did not occur to me.

*Adm. Digby.* From the ſituation of the ſhips?

*A.* Yes, Sir, from the ſituation of the ſhips, and the fleet in general.

*Sir Chal. Ogle.* You will pleaſe to inform the Court of your reaſons for thinking why it would not have been a right meaſure.

*A.* Becauſe I did not think that the Admiral intended to renew the battle that evening; I thought ſo then; and from every circumſtance that I can recollect, I think ſo now.

*Capt. Duncan.* What! was not the ſignal for the line of battle flying all the afternoon?

*A.* To the beſt of my recollection, I think it was.

Q. Was the ſignal flying on board the Formidable to your own knowledge the whole afternoon?

*A.* To the beſt of my recollection I think it was.

*Capt. Peyton.* When the centre and van diviſions were

were in a line, or near it, and the Formidable was ſteering after, and kept the Victory a little open on the lee-bow, what was the poſition of the Queen reſpecting the Victory?

*A.* She was a-head of her, in the line, a little open on her bow, but I cannot recollect how much.

*Capt. Robinſon.* You ſay you repeated the ſignal for the line; did you fire a gun at the time?

*A.* Upon my word I cannot recollect.

*Adm. Digby.* Did you receive orders from the Vice-Admiral to repeat the ſignal?

*A.* I was foreward on the fore-caſtle at the time; I ſaw it repeated; I ſaw it flying at different times; I did not ſee it hauled down before dark.

*Adm. Digby.* Were the colours hauled down any part of the night?

*Q.* I do not recollect they were.

*Sir Ch. Ogle.* At daylight, or ſoon after, did you take any notice of the Stirling Caſtle or Queen?

*A.* I did not take notice of the Stirling Caſtle; I remember the Queen on the ſtarboard quarter of the Victory; ſhe was upon the right wing of the fleet, and the Formidable on the left. In about half an hour the fleet wore, and brought to with their heads to the northward.

*Adm. Digby.* When the Formidable was neareſt the Victory in the afternoon of the 27th, was you within hail of her?

*A.* I do not recollect that we were. We could not be far diſtant.

*Preſident.* Do you think that from the Victory they might ſee the ſtate of the Formidable?

*A.* I think they might. I think it muſt be viſible within half a mile, or a mile.

*Preſident.* Did you perceive, at any time in the afternoon, that the Victory kept her wind?

*A.* Not till late in the evening. I cannot mention as to the time.

*Captain Colpoys.* Did you take notice what ſail the Victory had out in the evening from four to ſeven o'clock?

*A.* Three

*A.* Three top-ſails and fore-ſail. I cannot ſay whether they were reefed or not, and there might be a mizen-ſtay-ſail or mizen; nor do I know whether they were reefed or not. I think her top-ſails were reefed towards the cloſe of the evening.

His examination being here cloſed, Sir Hugh Palliſer ſaid, he did not propoſe to examine Capt. Beazley till he had occaſion to call him upon his defence.

MR. FORFAR, MASTER OF THE FORMIDABLE, CALLED AND SWORN.

The log-books he had delivered, he ſaid, were not written by himſelf, nor had he marked the log-board at the time; but yet he ſwore to the authenticity of the remarks contained in it, without alteration or addition, ſince it was firſt wrote.

*Q.* How ſoon did the Formidable wear after coming out of action on the 27th of July?

*A.* Almoſt immediately.

*Q.* How long did ſhe continue on the larboard tack?

*A.* But a very little while.

*Q.* At what time did ſhe wear again to ſtand to the ſouthward?

*A.* About two o'clock.

*Q.* At what time did you paſs the Victory, and how near?

*Q.* We paſſed her ſoon after very near, but not within hail.

*A.* What was the condition of the Formidable upon coming out of action with reſpect to her ſails and rigging?

*A.* She was an entire wreck in theſe particulars, *particularly forward.*

*Q.* How long after you had paſſed the Victory was it before the Victory wore to the ſtarboard tack?

*A.* Almoſt immediately; ſhe wore juſt under her ſtern.

*Q.* Was ſhe within hail?

*A.* No.

*Q.* What

Q. What ſignals were flying on board the Victory at that time?

*A.* I cannot tell.

Q. What ſignals were flying on board the Formidable at that time?

Q. I cannot particularly tell. I was ſo employed in the repairs of the ſhip.

Q. Do you remember the Fox coming to the Formidable?

*A.* Yes.

Q. At what time?

*A.* I cannot ſay juſtly; it was a little before ſunſet?

Q. Do you remember the Fox hailing the Formidable?

*A.* Yes, I do.

Q. What meſſage was delivered?

*A.* I cannot ſay; I did not hear it.

Q. Did you hear any anſwer delivered to the meſſage?

*A.* I did not hear any. I was on the fore-part of the deck when they hailed the Formidable, and did not hear any thing one way or other.

Q. Can you tell the ſituation of the Ocean from five, till ſhe bore down into the line?

*A.* She was upon our lee-quarter, within a mile.

Q. Can you mention the time when ſhe bore away?

*A.* I cannot; to the beſt of my recollection it was before the Fox came to us.

Q. Did you ſee the Ocean bear away?

*A.* Yes.

Q. How many points did ſhe ſeem to go more from the wind than the Formidable was ſteering at that time?

*A.* Two or three points, I think.

Q. What ſail had the Formidable at that time?

*A.* The main-top-ſail was on the cap, our main-ſail was very much cut, the mizen-top-ſail was on the cap, and our fore-tack was on board, but the ſail was all in pieces.

Q. Was

Q. Was the condition of the Formidable ſuch that ſhe could have bore away at that time?

*A.* Yes; we certainly could have bore away before the wind.

Q. What was the ſituation of the Victory reſpecting the Formidable?

*A.* About a point under her lee-bow. We were ordered to do ſo; and we endeavoured to keep her as near as we could.

Q. Did you receive any orders from Sir Hugh Palliſer relative to the ſteerage of the ſhip?

*A.* Yes.

Q. What were they; and when did you receive them?

*A.* To keep the Victory about a point under our lee-bow; to ſteer after her; and thoſe orders were given, I think, at five o'clock when the Red diviſion went a-head of the centre.

Q. Was that the propereſt courſe to get into your ſtation?

*A.* That was the proper courſe, I think. The Victory was going from us, and we were following her.

Q. At what time was that?

*A.* A little before the Fox came to us. The orders were given to me to keep the Victory under our lee-bow, when the Red diviſion went a-head of the centre at five o'clock.

*Capt. Robinſon.* Was your ſhip then in a condition to have bore down into her ſtation in the line, and to keep it there?

*A.* No, by no means. It was impoſſible.

*Capt. Kempenfelt.* Did you obſerve the poſition of the Queen, at the time the Red diviſion went a-head to take their ſtations in the line?

*A.* A little before our beam; and the diſtance might be a mile, or a mile and a half.

Q. Did you ſee the ſignal for the line flying on board the Formidable?

*A.* I really did not obſerve it, nor any ſignal but the pendants. I was much employed.

Q. Did

*Q.* Did you ſee the blue flag on the mizen-peak?

*A.* I did ſee flags at the mizen-peak, but cannot ſay what they were for.

*Q.* What time did the Formidable get into her ſtation in the line?

*A.* Juſt about break of day.

*Q.* When was the Formidable in a condition to get into her ſtation in the line?

*A.* We bent our fore-top-ſail about eight o'clock; we might be able about dark.

*Q.* What was the reaſon of your being ſo long in bending the fore-top-ſail?

*A.* The fore-rigging was much cut, and the maſt being wounded, we found it rotten at the heart; we were afraid to truſt men on the tops till the rigging was ſet up, and the maſt was ſecured.

*Q.* Was you on deck at daylight on the 28th?

*A.* Yes.

*Q.* What was the ſituation of the Formidable with reſpect to the Victory and Queen at daybreak of the 28th?

*A.* The Victory was right a-head, her top and poop lights were in one, and the Queen was on the Victory's weather-quarter.

*Q.* Was your diſtinguiſhing lights burning?

*A.* I know the top light was up, I ſaw it lighted; I cannot ſay whether it was alight all night; I remember the man in the top calling out, that the light would not ſtay in; I know nothing of the ſtern lights.

*At four o'clock adjourned.*

## TWELFTH DAY. SATURDAY, APRIL 24.

On the Court's meeting this morning at ten o'clock, the Preſident acquainted the Priſoner, that the evidence on the part of the Crown being cloſed, the Court deſired to know when he intended to enter on his defence?

Sir Hugh Palliſer ſaid he ſhould be ſorry to defer it a moment longer than might be neceſſary to arrange the ſeveral parts of it, which from the length of the evidence

evidence already adduced, muſt be expected would take up ſome time; he would therefore beg the indulgence of the Court whilſt Tueſday next to enter on his defence. The Court being cleared to take this requeſt into conſideration, on a re-admiſſion of the audience, the Preſident acquainted the Priſoner, that the Court hoped he would make it convenient to enter on his defence on Monday morning, but as they were unwilling to preſs him in reſpect to time, they would, on the Court's meeting on Monday at eleven o'clock (which would be unavoidable), allow him whilſt Tueſday, if Sir Hugh then thought it neceſſary.

Sir Hugh expreſſed himſelf much obliged to the Court for their indulgence, and ſaid he ſhould be ſolicitous to expedite it, ſo as not to take up the Court an unneceſſary moment of their time. He required alſo permiſſion to have recourſe to the log-books of the Queen and the Valiant, as the previous inſpection of thoſe might be of great ſervice to him on his defence.

The Court was again cleared for a few minutes, after which this requeſt was alſo aſſented to, and the log-books of the Queen and Valiant, as alſo that of the Berwick, ordered to be procured; on which the Court adjourned to Monday morning, eleven o'clock.

THIRTEENTH DAY, MONDAY, APRIL 26.

The Court being met this morning, Sir Hugh Palliſer, in an addreſs to the Preſident and the other members, explained the difficulty he laboured under, in preparing a defence oppoſed to circumſtances of an indirect and complicated nature, ariſing from the whole evidence in behalf of the proſecution, a ſpecific charge not having been alledged againſt him, he requeſted therefore, whilſt Wedneſday morning, at which time he ſhould enter upon it; this he hoped would readily be granted him, when he acquainted the Court, that the evidence he ſhould produce, would not be tedious, as he expected the whole would be gone

gone through by the latter end of the week; the Court without withdrawing aſſented to the requeſt, and adjourned.

FOURTEENTH DAY, TUESDAY, APRIL 27.

The Court met again, and immediately adjourned to Wedneſday morning.

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# THE FIFTEENTH DAY.

WEDNESDAY, APRIL 28.

The Court aſſembled this morning at eleven o'clock, and in about half an hour Sir Hugh Palliſer came on board, and addreſſing himſelf to the Preſident and the reſt of the members, ſaid, that his voice being too low to deliver the whole of his defence in ſo articulate a manner as he could wiſh, he would beg the Judge Advocate might be permitted to read it in his ſtead, which being complied with, he accordingly delivered it to him, and it was read as follows:

## INTRODUCTION.

*Mr. Preſident and Gentlemen of the Court,*

Before I enter into the formal vindication of my conduct on the 27th of July, which is the ſubject of the preſent trial, I will beg leave to ſpeak a few introductory words as to the peculiar circumſtances under which I appear before you.

There is ſome conſolation to me, in my preſent very diſtreſſing and delicate ſituation, that I am tried by men, whoſe generous feelings take no ſhare in the prejudices that have been ſo induſtriouſly and invidiouſly created againſt me, whoſe impartiality will judge

judge of my conduct from the evidence produced, nor will they, from the clamours of a faction, nor the malevolence of my enemies, deny the tribute of commiseration to the unfortunate.

I may truly call myself unfortunate in the utmost latitude of the word, the sufferings which now afflict me having been brought on by the solicitation of a candid and fair hearing, to defend my character against the attacks of the most inveterate and unrelenting enemies. After a service of four-and-forty years, during which time, from the commencement, it has ever been my study, and my wish to deserve well of my country, neglecting no opportunity of serving it, and undergoing at times no small danger and toil in my endeavours and anxiety to do so. It has been my care to offer myself on every occasion, and it has been my good fortune to have received from my King and Country, distinguished marks of their approbation and favour, and also, till the occasion of the present trial, to meet with the approbation of my superiors in command. I have ever valued my honour and character at a higher rate than the emoluments of the most beneficial employments, and have ever been ready to sacrifice the latter, rather than tamely submit to the assassination of the former.

When it was thought proper to make war upon our old and insidious enemy, though I might have been in some degree sanctified from taking an active part in it, from an infirmity which I received in the course of my services; I stepped forward, and had the honour to serve the third in rank under Admiral Keppel. I endeavoured to act in that station, to the utmost of my ability, and as far as zeal could carry me for the good of the service. The day of engagement was not so decisive as the country fondly expected, and though the Admiral publicly and repeatedly testified his approbation of my conduct, yet some of the Admiral's friends and dependants threw out insinuations of the most invidious nature, tending to throw the whole of the failure of that day on me, and the

ships

ſhips of my diviſion. The greateſt part of the weight of the action fell on that diviſion, and particularly on me, from our ſituation in it. Stung with this ſecret and unmerited attack on my character as an officer, I waited on the Admiral, requeſting him to clear my character from the aſperſions that were ſo unjuſtly thrown on it. I found him averſe either to accuſe or exculpate me. I found that privately he did not diſcourage theſe attacks; and, thus preſſed, I purſued means, chiefly for my own vindication, which has brought upon me the rage of ſo violent a party, by whom, and by whoſe means, the moſt unexampled irregularities have been practiſed to effect my ruin and deſtruction, as well as through the pretence of my name to diſturb the public tranquillity.

I found the moſt rancorous and rooted ill-will give riſe, in the breaſts of my enemies, to the moſt inveterate calumnies. They thirſted for my deſtruction, and under the maſk of ſeeming delicacy and tenderneſs, plotted againſt my life and honour. I therefore anticipated the wiſhes of my enemies, and gave myſelf up to the trial of my country. I yielded up places to the amount of between two and three thouſand pounds a-year, and reſerved only to myſelf my rank in the ſervice, which I retained with a view only of having the benefit of a trial, but which they ſtrove, by the moſt ſhameful attacks, to wreſt alſo from me. My enemies preſcribe no bounds to their rage and malice. Before my trial was ordered every ſpecies of threat was applied to deter me from appealing to a Court-Martial for clearing my honour;—every art which the induſtry of a hoſt of powerful enemies can ſupply, have ſince been uſed to diſappoint me of a fair hearing. All accuſe ſecretly, but not one of the liſt has dared to avow openly his ſentiments, and make a fair and ſpecific charge againſt me. My real accuſers become witneſſes. No certain and defined charge is exhibited, ſo that new accuſation comes out daily. If the accuſation fails of ſucceſs, blame belongs to nobody—If it ſucceeds, each will claim a ſhare in

the merit of making it. The moſt inveterate means are uſed to ſtrengthen the prejudices againſt me. In the newſpapers my very judges are menaced and intimidated, and charged as parties in my cauſe. Nay, the rancour and the malice of my enemies have gone ſo far, that two of the Admirals, and the greateſt part of the Captains, who have given evidence againſt me, have joined in an addreſs to his Majeſty to degrade me from my rank; and I have reaſon to believe, that they have been ſo regardleſs of the ſemblance of decency as to ſign it, though at the very time when they knew they were ſummoned as witneſſes on my trial.

With all this weight of party prejudice co-operating againſt me, my enemies may have flattered themſelves with the hopes of diſarming me of the fortitude requiſite to ſuſtain me in ſo oppreſſive and trying a ſituation; but feeling a confidence in my innocence, and the impartiality of this Court, I reſign myſelf to the iſſue of my trial without either dread or apprehenſion.

## *DEFENCE.*

The general ſubject of the preſent trial is my conduct as Commander in the third poſt of the Britiſh fleet under Admiral Keppel, on the 27th and 28th of July laſt; more eſpecially my conduct ſubſequent to the action with the French fleet, on the former of thoſe days.

The firſt thing inſinuated againſt me is, that at five in the morning of the 27th, my ſhip was conſiderably to leeward of her proper ſtation. I collect this charge from the manner in which Admiral Keppel, on his trial, explained the object of the ſignal for ſix or ſeven of the ſhips of my diviſion to chace to windward; for as he repreſents, this ſignal was to cloſe the interval between the Victory and me, *occaſioned by my being too far to leeward*; and Admiral Campbell, who now

now appears to have made this ſignal, ſo important in its conſequences, without previouſly conſulting the Commander in Chief, juſtifies it under the ſame idea.

Whether the gentlemen mean abſolutely to impute any fault to me in this reſpect is not quite clear from their words; but as they may bear ſuch a conſtruction, it is not fit that I ſhould ſuffer them to paſs unnoticed.

My anſwer is, that at the time ſtated, the Formidable was upon the Victory's lee-bow, and that this was the poſition in which the Admiral's laſt ſignal for the fleet's tacking altogether, which was in the morning of the preceding day, had placed me; and that he ſuffered me to continue in it without making any ſignal to alter my poſition, which implies that he did not diſapprove of it. As to the evidence of Admiral Campbell on this head, he placing me before the Victory's beam, it will be found contradicted, not only by my officers, but by Admiral Keppel's own journal, which deſcribes me on the 27th to have been on his lee-bow at daylight. The words of the journal are, "*At daylight ſaw the French fleet to windward, the Vice-Admiral of the Red and his diviſion on the weather-beam, the Vice of the Blue on the lee-bow.*"

Therefore it ſeems moſt probable, that Mr. Campbell, perhaps not a little ſolicitous to juſtify his own ſignal, I will not ſay influenced by a deſire to ſtrain every thing into a crimination of me, is inaccurate in the recollection of my poſition. But be this as it may, and though it ſhould be admitted, that Rear-Admiral Campbell is right in ſuppoſing me to have got more to leeward in the morning of the 27th than I was the night before, yet I truſt that will be no cauſe of cenſure of me, unleſs it ſhall appear, which I think impoſſible, that my being too far to leeward was owing to ſome negligence or inattention on my part: Sure I am, that I was ever ſtudious to keep my ſhip, where I thought the Admiral's motions required her to be; nor have I the leaſt reaſon to ſuppoſe that my

officers were wanting in exertions to ſecond my endeavours, and obey my orders for this purpoſe.

As to my conduct in the engagement itſelf, it was ſo unexceptionable, that the moſt bitter of my enemies do not complain of it, conſequently to enter into a formal juſtification of this part of my conduct, would be giving unneceſſary trouble. However, I doubt not but that the Court will be attentive to the ſhare I had in the engagement; as well, becauſe the proper diſcharge of my duty, whilſt the action laſted, may entitle me to ſtrong preſumptions in my favour, as becauſe it will account for the extraordinary damages to my ſhip, which materially relate to the defence of my ſubſequent conduct.

With a view to this, I beg to be indulged with a few words relative to the action itſelf.

I went into action under very ſingular diſadvantages; for whatever might be the intention of the ſignal for moſt of the ſhips of my diviſion to chaſe to windward, the effect produced, was ſeparating ſo many of my diviſion from me, and from each other, that, during the time of action, I had not one ſhip near enough to ſupport me. Both the other flag-officers were ſupported in the action by all the ſhips in their reſpective diviſions; and the Admiral's own diviſion was further aided by the junction of ſeveral ſhips of mine. But the ſignal for chaſing left me with only two ſhips in any degree near me, and theſe, by the chaſm from the want of my other ſhips, were at too great a diſtance to take off any part of the enemy's fire, the neareſt ſhip a-head of me being half a mile from me, and the neareſt a-ſtern a mile, except for a few minutes at the latter end of the action, when one of the ſhips a-ſtern of me ſhot cloſe up to leeward of me. Before I began firing on the enemy, I tacked my mizen-top-ſail, and it was kept ſo all the time I was paſſing the French line; which by retarding my progreſs, enabled me to give the French more of my fire, and conſequently was the cauſe of my receiving more from them. The firſt ſhip I became cloſe engaged

gaged with was the firſt or ſecond ſhip a-head of the French Admiral, after which I ſucceſſively paſſed the remainder of the French centre and the whole of their rear; and that no ſhips might eſcape my fire, I hauled my wind, to cloſe with the two ſternmoſt ſhips of the enemy, which appeared to have kept more to windward than the other ſhips I paſſed, and not to have been engaged before. On the whole, I believe that the Formidable fought ſeven or eight ſhips more than fell to the ſhare of Admiral Keppel, whoſe log took notice of engaging only ſix ſhips of the enemy's, beſides the French Admiral; and is therein confirmed by the evidence of Mr. Moore at the late trial, he ſpeaking to only ſeven or eight ſhips.

Theſe particulars of my conduct in the engagement I ſhould be above relating, if it was not neceſſary to account for the extraordinary damages to my ſhip; and if ſome of the witneſſes againſt me, when they were examined to this point, had not ſpoken of me in ſuch cold and indifferent language as ſtrongly marked their anxiety to prevent any favourable impreſſions of me on the minds of the Court; leſt my proper behaviour in the critical moment of action, ſhould induce a favourable conſtruction of my ſubſequent conduct. It is very true, as Admiral Keppel expreſſes it, that I only performed my duty like other officers. But the queſtion which came from the Court, did not lead to ſo invidious and offenſive a compariſon as the anſwer points at, nor can I imagine why it was anſwered in that way, except from ill-will towards me. If any compariſon was proper, it ſhould have been, not of the conduct of one officer with another, but of the ſhare which they reſpectively had in the action, from the different ſituation of their ſhips. It might be, and ſo the fact was, that it was my fortune, and that of the ſhips of my diviſion to have more of the action than the ſhips of the two other diviſions. Yet it would be a great injuſtice to ſuppoſe, that the Captains of the other diviſions, if they had been engaged

on the ſame terms, would not have acquitted themſelves with equal zeal.

On coming out of the action, the firſt moment I was clear of the ſmoke, I anxiouſly looked for the Admiral, being ever ſolicitous to ſecond what appeared to me to be his deſign. At this time he had wore, and I ſaw him at ſome diſtance, with the ſhips of his own diviſion about him, and ſome of mine, which had joined him in the beginning of the engagement. He was ſtanding towards the enemy, and had the ſignal for battle ſtill flying. The Red diviſion was then to windward of the enemy. Hence I took for granted, that the Admiral intended to renew the engagement immediately; and rejoicing at the idea, I did not one moment heſitate to endeavour taking the lead in what then appeared to me ſo glorious a deſign; therefore, though my ſhip was the laſt, or laſt but one, which came out of action, and had apparently ſuffered very much in her ſails and rigging, and in loſs of men, yet I inſtantly ordered the ſhip to be wore, and to ſtand towards the enemy, who was ſtill within gunſhot of us, without waiting to examine into the ſtate of our damages. I alſo directed the officers and men to return to their quarters. My orders were executed inſtantly, and by the uſe of temporary ropes to brace the yards about, the ſhip was wore. Admiral Keppel and the officers of the Victory ſay, that they were quite ignorant of this movement of the Formidable; but to others it was very apparent, particularly to Captain Marſhall, and the Captain of the Worceſter. How ſo material a motion of the Commander in the third poſt, eſcaped the notice of thoſe on board the Commander in Chief, I know not. But whatever the cauſe may have been, I feel this as one of the many inſtances, in which it was my ill fortune not to be an object of their attention, under any circumſtances which place my conduct in an advantageous point of view.

Some time after this wearing, and ſtanding towards the enemy, I perceived that the Admiral had hauled down

down the ſignal for battle, and ſhortened ſail; and that the ſame was done by the Vice-Admiral of the Red. This led me to imagine, that the Admiral had given up all thoughts of immediately renewing the action, and I was not miſtaken; for the Admiral confeſſes, and juſtifies it. At the ſame time, ſeeing the whole French fleet wear to come on the ſtarboard tack, and that three of them ſtood directly towards the Formidable, I directed her to be wore a ſecond time, and advanced to join the Admiral. This ſtep appeared to me to be neceſſary, to prevent the danger of being cut off; and it was a further inducement to me, that I then did not ſee any thing to warrant my keeping ſo near to the enemy, and at ſuch a diſtance from the Admiral, and the body of the fleet, as I was then alone.

At this period ariſes the ſecond article of a charge againſt me, for the origin of which I am alſo indebted to Rear-Admiral Campbell; for it was he who firſt ſaid, that as the ſignal for the line, at a cable's length aſunder, was then flying on board the Victory, and ſhe was on the larboard tack, I ought to have continued on the ſame tack, and alſo a-head of the Admiral, that being my ſtation in the line on the larboard tack.

But the fact is, that we on board the Formidable did not ſee the ſignal for the line, till we came a-breaſt of the Victory. That ſignal being at the mizen-peak, and the Victory ſtanding end-on towards the Formidable, it was impoſſible that we ſhould ſee it ſooner. It was alſo inviſible to us on board the Arethuſa, the repeating frigate; for ſhe had been called in from proceeding to her ſtation, and kept near the Victory, Captain Marſhall being actually on board her. This brought both ſhips into the ſame poſition in reſpect to the Formidable, and rendered it equally impoſſible to ſee the ſignal on board of either. I believe that I am quite accurate in ſtating the poſition of the Victory and the Arethuſa, at the time I am ſpeaking of—that is, from the ſecond time of the Formidable's wearing, till ſhe paſſed the Victory; Captain Marſhall having been

firſt called by the ſignal, and then hailed, had been an hour on board the Victory; a very extraordinary circumſtance, as it appears that there were no orders for him, and his being with the repeating frigate out of her uſual ſtation, during ſo critical a time, deprived me, and probably ſome others, of the full opportunity of ſeeing the ſignal for the line. At all events, I am certain, that in point of fact, I never ſaw the ſignal for the line till we were a-breaſt the Victory, though I continually directed my attention to her; nor was it ſeen by any of my officers. This will appear the leſs extraordinary, when it is conſidered, that Sir Robert Harland never ſaw it, whilſt on the larboard tack, though his ſituation on the Victory's weather-beam rendered it indiſputably more probable that he ſhould ſee it, than that I ſhould, when right a-head of the Admiral. Captain Laforey alſo acknowledges that he did not ſee the ſignal for the line, whilſt he was on the ſtarboard tack and the Victory on the larboard tack, till he paſſed the Victory. It is material to obſerve that whilſt I was ſtanding towards the Victory, no ſhips were formed in a line a-head, or a-ſtern of the Admiral, nor was there any other indication of the ſignal for the line being flying, for it had not been inforced, either by the ſignal for ſeeing particular ſhips out of their ſtations, or for particular ſhips to make more ſail, both which ſignals being at the main-top-maſt head, might have been ſeen by us, though the ſignal for the line was inviſible. But if I had ſeen the ſignal for the line, my wearing and approaching towards the Victory on a contrary tack would have been juſtifiable; becauſe, as I have already explained, the ſignal for battle was hauled down, and the Victory, with the Vice-Admiral of the Red and his ſhips had ſhortened ſail; and at the ſame time I ſaw the French fleet wearing to come on the ſtarboard tack, and three of their ſhips pointing towards me. Under theſe circumſtances it appeared to me, that if I had not wore again, and ſtood to join the Victory, and the reſt of our fleet, the three ſhips of the enemy which pointed to me would have had it in

their

their power to have ſeparated me from the reſt of our fleet. My danger at this time is apparent, even from the evidence of Admiral Keppel himſelf. About the time of my wearing, he made the ſignal to wear, and though he was conſiderably more diſtant from the enemy, than the Formidable was when ſhe wore, he ſays, that he ſhould not have deſerved the name of an officer, if he had not wore, founding himſelf on the circumſtances of the enemy's forming their line upon the ſtarboard tack, and his line not being formed. This was only a little before the time, when Sir Robert Harland, at a former trial, deſcribed Admiral Keppel to be in ſo much danger; ſeeing him, as Sir Robert ſaid, unſupported, and within the power of the whole French force then a-ſtern of him, that he was coming down to ſupport him without waiting for orders. If then it would have been ſo dangerous for the Victory to have continued on the larboard tack, what muſt have been the conſequence, if my ſhip alone, and ſo much nearer to the enemy, had remained there? But notwithſtanding all theſe circumſtances to juſtify me for wearing the ſecond time, and advancing to join the Victory, the Admiral, in his evidence, could not help betraying his inclination to blame me; and Rear-Admiral Campbell, ever induſtrious to attack me, goes a ſtep further, precipitately and decidedly imputing to me a poſitive diſobedience to a ſignal which I did not, and could not ſee. This is the more obſervable, becauſe Admiral Keppel acknowledges, that when I paſſed the Victory there was no other ſhip with her, notwithſtanding the ſignal for the line, and that mine was the laſt ſhip which paſſed him; and further, that he ſaw no poſſibility of forming the line on the larboard tack, and had therefore made the ſignal to wear, which the Formidable had already executed. Yet he approved of all the other ſhips which paſſed him, but blames me; how is this partiality to be accounted for, otherwiſe than by ſuppoſing both Admiral Keppel and Rear-Admiral Campbell, to be influenced in their repreſentations of my conduct, by ill-will towards me.

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One other obſervation only, ſeems neceſſary on this head, which is, that the Admiral himſelf confeſſes, that my wearing the ſecond time, coming on the ſtarboard tack, and joining him, did not prevent his renewing the engagement, or produce any other ill effect; and was ſo far from interfering with his views at the time, that I was only doing that which he was on the point of doing.

A little before three o'clock, the Formidable paſſed to leeward of the Victory, and in paſſing, the ſignal for wearing *firſt* opened upon us, and then the ſignal for the line. The latter was ſoon after repeated by me, notwithſtanding the doubts which may have ariſen, from its not having been obſerved by ſeveral of the witneſſes examined againſt me. The fact of my repeating it is not only mentioned in the Formidable's log-book, but will be proved by the officers of the ſhip, particularly the midſhipman whom I appointed to repeat ſignals, and by other witneſſes. It will alſo be further proved, by a very remarkable piece of evidence, which probably never would have occurred to me, if a member of this Court had not aſked one of the witneſſes, whether a gun was not fired, as it ought to be, when the ſignal was repeated. This queſtion led me to call for the gunner's expenſe-book of the Formidable, where, to my great ſatisfaction, I found a moſt corroborating evidence of our repeating the ſignal for the line, namely, an expreſs charge of the expenſe of powder for the gun fired on the occaſion; which appears to be the laſt gun fired from my ſhip on the day of action. The gunner's expenſe-book I ſhall produce before the Court; and I hope that this, with the other evidence, will remove all doubts about a fact which ſome of the witneſſes againſt me have ſo poſitively denied. I ſhall alſo prove that the ſignal for the line was kept flying till it was dark; except for a ſhort interval, during which it was ſhifted to make the ſignal for ſhips to windward to bear down into the Admiral's wake, the firſt time of hoiſting more conſpicuous, in the ſame manner

manner as was done aboard the Victory. As to the ſignal for wearing, it was not repeated by me, becauſe being already on the ſtarboard tack, as that ſignal required, I deemed the repetition improper. Rear-Admiral Campbell, on the trial of Admiral Keppel, ſpoke as in doubt whether the ſignal for wearing was made till after I had paſſed the Victory; ſaying, that the Victory did not wear till a quarter of an hour after paſſing on the larboard tack, and to windward of the Formidable; which, to the beſt of my recollection, is allowing much too long a time; for it appeared to us on board the Formidable, that the Victory wore almoſt immediately after paſſing to windward of us. But the purſer of the Arethuſa, who took the written minutes of ſignals on board the repeating frigate, makes this ſignal for wearing to the ſtarboard tack to have been up half an hour; as by his account it was hoiſted at half an hour after two, and Captain Marſhall, and the mate of the Arethuſa agree with him, that it was not hauled down till three, conſequently it was up a quarter of an hour before I paſſed to leeward of the Victory; even though Admiral Campbell ſhould be correct in ſuppoſing that it was ſo long as a quarter of an hour after the Victory's paſſing us on the larboard tack before ſhe wore.

Within a few minutes, or to adopt Admiral Campbell's reckoning, a quarter of an hour, after the Formidable's paſſing the Victory, whilſt the latter was on the larboard tack, ſhe wore, and re-paſſed to leeward of the Formidable, and very near her.

Here it is proper to take notice of a very ſtrong charge of diſobedience to ſignals, which my enemies have repeatedly urged againſt me, with the utmoſt confidence, and which has been the great cauſe, both of the late trial, and all my preſent ſufferings. The charge, as firſt ſtated in the public prints, was, that the cauſe of Admiral Keppel's not re-attacking the French at half paſt three in the afternoon, was my not joining him, but being at that time four miles

to

to windward with my diviſion. Admiral Keppel, ſpeaking in parliament a little time before the charge which produced the late trial, though he then ſeemed to diſclaim the imputation of any wilful diſobedience on my part, pointed at the ſame thing; for he aſſerted that the ſignal for coming into his wake was flying from three o'clock to eight in the evening, unobeyed. In his defence on the late trial, the Admiral purſues the ſame idea; for he aſſerts, that the blue flag for ſhips to windward to come into his wake was hoiſted for the firſt time; becauſe *I continued to lye to windward, and by ſo doing, kept my diviſion from joining him.* I am now citing the Admiral's own words when on his defence; and, in the evidence he had given againſt me on oath, he expreſſed himſelf to the ſame effect, when he explained to the Court the occaſion of firſt hoiſting the blue flag. But the charges thus boldly aſſerted, ſuppoſe facts which never exiſted. According to Captain Marſhall, his purſer, and the mate of the Arethuſa, all ſpeaking from the written minutes of ſignals taken at the time, the blue flag for ſhips to windward to come into the Admiral's wake, was firſt made at twenty-four minutes after three, and it was hauled down a few minutes after; the two former witneſſes mentioning thirty minutes after three, and the latter twenty-ſeven minutes, and all three agree that it was not made again till thirteen minutes after ſix.

It is alſo proved by the minutes of the purſer, who was the perſon appointed by C. Marſhall for the purpoſe, that the ſignal for wearing the ſecond time, and coming to the ſtarboard tack, was made at thirty minutes after two, and hauled down at three; which ſhews that, at this latter time, the Victory was in the act of wearing, after which ſhe paſſed the Formidable to leeward, ſo near as to be almoſt within hail, and went a-head of her, and then edged away, leaving the Formidable in her wake. Within ſo ſhort a time as twenty-four minutes, from the Victory's wearing, to the hoiſting of the blue flag on board the Arethuſa, it

was

was abſolutely impoſſible that the Victory could have wore, paſſed the Formidable, and got ſafe a-head of her, but that I muſt have been much nearer to the Victory than the mile preſcribed to me by my ſtation in the line; and as by the Victory's edging away, I was left in her wake, the blue flag could in no ſenſe be applicable to me; nor was it applicable to the ſhips in general of my diviſion; for all of them, except the Defiance which had joined the Red diviſion, and the America which was far a-head, were a long way to leeward of the Admiral when the blue flag was firſt hoiſted, as will appear from examining the evidence of the ſeveral captains of my diviſion at the late trial. It alſo appears by the ſame teſtimony, and the Admiral's own account of the ſhips when he made the ſignal to wear to the ſtarboard tack, that no ſhip was near me but the Victory herſelf; ſo that, though I had been to windward, I could not be ſaid to have kept the ſhips of my diviſion with me. So far I juſtify myſelf on the ſuppoſition, that the Admiral might poſſibly have got to leeward a little before the firſt time of making the ſignal for ſhips to windward to bear down; and if there was nothing more, I ſhould ſtand fully exculpated from being the cauſe of that ſignal. But an additional fact is come out on the preſent trial from a witneſs examined againſt me, which removes even the poſſibility of my being the object of the blue flag the firſt time of hoiſting it. Mr. Graham, who took the minutes on board the Arethuſa, has informed the Court, that the blue flag, though not repeated on board the repeating frigate till twenty-four minutes after three, was hoiſted on board the Victory at fifty-ſix minutes paſt two; Captain Marſhall not chuſing to repeat it till the ſignal for the line was hauled down on board the Victory to ſhew it plainer. Compare this with the time of hoiſting the ſignal to wear to the ſtarboard tack, which was at thirty minutes paſt two, and the time of the Victory's actually wearing, which, from the written minutes taken on board the Arethuſa, appears to have been at three;

and

and the unavoidable reſult muſt be, that the blue flag for ſhips to windward to bear down was firſt made when the Formidable was actually to leeward of the Victory. What then becomes of the Admiral's confident aſſertion, that my *ſtill continuing to windward* was the cauſe of this ſignal? I beg the Court's particular attention to this expoſition of the numerous untruths and miſrepreſentations which have been applied to make the ſituation of my ſhip the cauſe of firſt hoiſting the ſignal for ſhips to windward to bear down. I was repreſented to have been to windward of the Victory, when I was actually to leeward of her. If I had not been to leeward, the time would have placed me in the Admiral's wake, within the diſtance of my ſtation in the line; whereas the charge ſuppoſes me to have been ſo far, and ſo long out of his wake, as to require an enforcing ſignal. I am repreſented to have *continued to windward* before the ſignal was made, which implies that I had been ſo for ſome conſiderable time; but if I had really been to windward, the twenty-four minutes between the Victory's ſecond wearing, and firſt time of the Arethuſa's repeating the ſignal for ſhips to windward to bear down, would barely have allowed time for the Victory's paſſing to leeward of the Formidable.——My diviſion is repreſented to have been to windward of the Admiral, when only one of them was ſo.—They are ſaid to have been kept near me, when they were at a diſtance from me, and actually to leeward of the Admiral, and when the only ſhip near me was the Victory herſelf. The ſignal for coming into the Admiral's wake was alledged to be flying from three o'clock in the afternoon to eight o'clock at night, unobeyed by me; but the fact turns out to be, that it was never flying from twenty-ſeven or thirty minutes after three, to thirteen minutes after ſix; and it is as certain, that it was not applicable to me, at the ſooneſt, till this latter time.

But if neither I nor my diviſion were objects of the blue flag the firſt time it was hoiſted, it may be aſked, to what ſhips it could be applied?—and this I think myſelf

myſelf able to explain to the Court, though in ſtrictneſs, my juſtification requires no more than proving myſelf not within the meaning of that ſignal. The Court will pleaſe to recollect, that the blue flag was firſt hoiſted at fifty-ſix minutes after two, at the mizen-peak, with the ſignal for the line; and that the Proſerpine's ſignal was made at three o'clock, to carry a meſſage to Sir Robert Harland, then to windward, to form in the rear of the Admiral, inſtead of going a-head, which was the proper ſtation of the Red diviſion on the ſtarboard tack, and further, that the ſignal for the line was hauled down at twenty-three minutes paſt three, to make the blue flag the plainer. It is therefore extremely probable, that the blue flag was firſt intended for Sir Robert Harland's diviſion to bear down; but leſt the ſignal for the line, the moſt commanding of all ſignals, ſhould be underſtood to controul the blue flag, and ſo prevent Sir Robert from obeying it, I conclude that Capt. Sutton was ſent with the meſſage for Sir Robert's forming in the rear; and as he was ſome time in going, and the Admiral apprehenſive perhaps of an attack on himſelf, and the crippled ſhips to the leeward of him, it is probable that the original ſignal for the line was hauled down to prevent any miſconception of the blue flag, and to expedite the purpoſe of the meſſage. If the blue flag was not intended for Sir Robert Harland's ſhip's to windward, I can no otherwiſe apply it than by ſuppoſing it made for ſome ſhips of the centre diviſion, which might be then to windward, inſtead of being in their ſtations a-ſtern of the Admiral. After the two ſhips had paſſed each other, the Formidable remained for ſome time, within the length of her ſtation in the line, ſhe being the ninth ſhip from the Victory, and conſequently nine cables' lengths, or rather more than a mile from her. But as the Admiral carried more ſail than the Formidable, in the diſabled ſtate of her ſail and rigging could make, the former was gradually and conſtantly increaſing her diſtance from the latter till night. The particular time when the

the Formidable was firſt left beyond the preſcribed diſtance of her ſtation in the line, it is impoſſible to fix. But whatever the time was, whether an hour or more after being paſſed by the Victory on the ſtarboard tack, it is the period from which I am to account for not preſerving my ſtation.

To find out, whether I uſed my utmoſt endeavours to preſerve it, there are two things to be obſerved; firſt, whether I ſteered the courſe proper for getting up to my ſtation again; and ſecondly, whether I carried all the ſail in my power.—If my being out of my ſtation in the line was owing to any failure on my part, it muſt have been in one or both of theſe points, and therefore they are the true and proper teſts of my conduct.

When the Admiral had paſſed to leeward of us, he edged away, which placed us in his wake, and we continued to ſteer after him till the Red diviſion paſſed under our ſtern to form in the rear, when we hauled a little to windward out of their way.

This, at the ſame time that it ſerved to give room to the Red diviſion to form, prevented us from being interrupted in refitting our rigging without producing any inconvenience to us; as it was impoſſible in our then ſtate to have kept our ſtation between any two ſhips in a line. But as ſoon as we had got clear of the Red diviſion, my attention was to keep the Admiral a little open under our lee-bow; which was keeping the command of the wind for taking our ſtation when we got up to the length of it, and were capable of managing our ſhip in the line. This has been already proved to the Court by the Captain and the Maſter of the Formidable, who have mentioned the directions I gave on the occaſion, and that they were complied with as exactly as was poſſible, and that we conſtantly kept the courſe I have deſcribed. I ſhall alſo trouble the Court with further examinations on the ſame head.

That we carried all the ſail in our power, will be fully explained to the Court, when I examine my officers

officers to prove how greatly the Formidable had ſuffered in her ſails and rigging. One of the greateſt impediments to our keeping up with the Admiral, was our inability to bend our fore-top-ſail till between ſeven and eight in the evening; the reaſon of which was ſtated to the Court, both by Captain Beazley, and the maſter of the Formidable; and if it ſhall be neceſſary, it may be further inquired into, when I call them and my other officers.

In the courſe of the evidence againſt me, it has been attempted to impreſs the Court with an idea that the Formidable was damaged in ſails and rigging little more than the ſhips in general, and not more than the Victory. But the Court will conſider and decide on the truth of this inſinuation, when all the particulars of our damages are related by my witneſſes. In the mean time, it may not be improper to remind the Court, how very improbable it is, from a compariſon of our much greater loſs in killed and wounded, than the reſt of our fleet experienced, that we ſhould not have ſuffered more in other reſpects. It fell to the lot of my diviſion to have the greateſt ſhare of the action; in conſequence of which we had more killed and wounded than Admiral Keppel's and Sir Robert Harland's diviſions together; and the Formidable had not only more killed, and many more wounded than any other ſhip, but even had ſingly, within two, as many killed and wounded as all the ten ſhips of Sir Robert Harland's diviſion collectively.

My enemies have laid much ſtreſs on its being ſo long before the Formidable was refitted, as if we had been tardy and dilatory. But I am confident, that the teſtimony of my officers, when they are examined, will evince the contrary, and that every poſſible effort was made to repair our damages in the ſhorteſt time. If the time, in which we were ſo employed, ſhould appear long, the Court will pleaſe to conſider the many circumſtances which concurred againſt us. The Formidable, I may ſafely ſay, had ſuffered in the action more than any other ſhip; and as we came laſt

out of action, we conſequently began to repair later. The time was ſtill further protra ed by our wearing immediately to ſtand towards the enemy again, and continuing to keep the men at quarters, in expectation of an immediate renewal of the action; ſo that we did not begin to refit till we came again to the ſtarboard tack, and joined the Admiral. We were alſo under other ſingular diſadvantages, which retarded our refitting when it did commence. The boatſwain was killed in the action, which muſt be allowed to be a capital loſs on ſuch an occaſion, in the repair of ſails and rigging, thoſe being in his particular department. I was deprived of all uſe of three of my lieutenants; for one was wounded in the action, and two were ſo extremely ill, that, notwithſtanding the greateſt anxiety to be upon duty during the action, they were abſolutely incapable of coming upon deck. It unfortunately happened too, that there was not one perſon on board the Formidable, either officer or ſeamen, who was in her when ſhe was fitted out, or knew how the boatſwain's ſtores were ſtowed. Having all theſe difficulties to ſtruggle with, we could not have refitted the ſhip ſo ſoon as we did, if I and my officers, with the men, had not all ſubmitted to the moſt fatiguing exertions, without the leaſt remiſſion till late at night; nor could the buſineſs of the repairs have been properly directed, if, by my deſire Captain Beazley had not, after the action, left the quarter-deck to attend on the fore-caſtle, where our principal damage was received, and by his perſonal activity and ſuperintendance there, endeavoured, as far as was poſſible, to prevent the inconveniencies from the want of the three lieutenants, and the boatſwain.

Some have attempted to make uſe of the circumſtance of the Formidable's wearing twice, and ſheering out of the way of other ſhips to my diſadvantage, and to perſuade the world from her being ſo far manageable in this reſpect, that ſhe was manageable for every other purpoſe; and, therefore, that this was a proof of her not being ſo diſabled in her

ſails

ſails and rigging as I repreſent: but I appeal to the experience of ſea-officers, whether a ſhip with any ſail, will not eaſily wear, or when going large, as eaſily ſheer out of the way of other ſhips, though not able to keep way with another ſhip carrying more ſail than ſhe is capable of ſetting, which was the caſe of the Formidable with reſpect to the Victory.

Another adverſe attempt has been made to ſhew the poſition of the Formidable when ſhe became to windward of the Admiral, to have been ſuch, that by bearing away, ſhe might at any time have fetched into her ſtation. One or two of the officers of the Victory have accordingly placed me in, or near the wind's eye of my ſtation, ſaying that they ſaw me almoſt on the Victory's beam. But none of them pretend to have ſet the Formidable by compaſs; and they have been moſt poſitively contradicted by Captain Beazley and the maſter of the Formidable, both of whom have teſtified that ſhe was left by the Victory at the diſtance of three miles, and about three points on the Victory's quarter, and one mile to windward of her wake, which together, throws me a mile and a half a-ſtern of my proper ſtation in the Admiral's wake. They will be confirmed in this by my other officers, who are more likely to be accurate in their obſervation, becauſe it was their buſineſs to regulate the motions of my ſhip by thoſe of the Victory, and they had my orders to keep the latter a little open on the former's lee-bow, whereas thoſe from whom they differ ſo widely, had no particular reaſon to be nicely attentive to the relative poſitions of the two ſhips. Captain Marſhall alſo, who appears to have been generally very accurate in his obſervations, corroborated the poſition of the Formidable, as deſcribed by my officers, where he explains the relative ſituation of his own ſhip, in reſpect to the Victory and Formidable, when the Fox was ſent with the meſſage to me. But what ſtill further expoſes the extravagance of placing me in the wind's eye of my ſtation is, its being contradicted by Admiral Keppel and Rear-Admiral Campbell. The former is very

vague in deſcribing my poſition; but as nearly as I can underſtand him, his remark from the couch does not tend to make me more than four points on the Victory's weather-quarter, which, in effect, agrees with Mr. Campbell's account. Such being their idea of my poſition, it differs only one point from the account of my officers; for the latter place me three points on the Victory's weather-quarter. and it imports little to my defence, which are moſt correct, when it is conſidered, that whether I was three or four points on the Victory's weather-quarter;—I was in either caſe far a-ſtern of my ſtation in the Admiral's wake, and conſequently could not fetch up to it, except the Victory had ſhortened ſail, or till I was able to ſet more ſail than the Victory. It will ſcarce be objected, that I ſhould have bore down into the Admiral's wake before I had got up to the length of my ſtation. But leſt it ſhould, I ſubmit to the Court that as the Admiral did not bring to, but was conſtantly increaſing his diſtance, it was officer and ſeaman-like to keep to windward of my ſtation till I could get the length of it, and was able to preſerve it when recovered. The courſe I ſteered to reach the length of my ſtation, if it could have been effected, would have brought me within half a mile to windward of it, and bearing down into the Admiral's wake ſooner would have been both an interruption to the ſhips already formed, and acting contrary to the ſignal for the line then flying, which being more commanding than the other, controuled it.

I have been ſo long in vindicating myſelf againſt the charge of diſobedience imputed to me for not being able to keep my ſtation according to the ſignal for the line, that I am very unwilling to trouble the Court with any other remarks on this part of my caſe. But the unrelenting invention and ingenuity of my enemies compel me to requeſt a little further indulgence on the ſame point,

From the purport of ſome parts of the evidence, I can plainly ſee that it is intended to lead the Court to conſider

conſider me as the cauſe of increaſing my diſtance from the Victory.

One mode of encouraging ſuch a ſuppoſition, is, that we continually kept cloſe to the wind, whilſt the Victory was going large. But the real fact is far otherwiſe. The courſe of the Formidable was ſouth the whole afternoon, which was a point or two from the wind. Our log ſo ſtates the courſe, and it will be corroborated by the teſtimony of my officers. The Victory's log falſely repreſents her to have laid to from one to four o'clock, and this falſehood was acknowledged by her maſter on the late trial. But during the reſt of the afternoon her log deſcribes her to have ſteered ſouth, two points from the wind, till ſeven in the evening, when ſhe is made to go ſouth-eaſt two miles, and afterwards to haul cloſe to wind. This ſhews that we ſteered the ſame courſe as the Admiral, and ſo furniſhes an anſwer to the vague and contradictory account of our always hugging our wind. The truth is, that we never kept cloſe to the wind, but always ſteered with the Admiral in the ſame direction, a little under our lee, which led us after him on the ſame courſe, and without altering our poſition from him, except by an increaſe of diſtance; and even if we had been inclined to hug the wind, as is ſuggeſted, the bad ſtate of our braces and bow-lines would not have allowed it. The neareſt we kept to it was a ſhort time after the Admiral's paſſing us to leeward, which was done, as I have mentioned before, that the Red diviſion, when they paſſed under our ſtern to occupy the rear, might have room to effectuate their movements without any interruption from the Formidable.

Another objection, aiming at the ſame concluſion, is deduced from a compariſon of the Victory's log with the Formidable's, as to the rate of ſailing. The rate marked in the Formidable's log, from four in the afternoon, is, for the firſt hour, two knots and two fathoms, and from ſix to ſeven three knots four fathoms. The Victory's log for the ſame hours, is

uniformly two knots each hour.—From this difference the argument attempted is, that my ſhip out-ſailed the Admiral's, and therefore, that it was my fault if I did not keep to the length of my ſtation. On the ſuppoſition that the two logs were accurately marked, and that there was no evidence to impeach their correctneſs, I am not afraid to acknowledge, that there would be force in this reaſoning.

But it be would a dangerous example if Courts-Martial ſhould give implicit credit to the marking of log-books, more particularly when the attention is neceſſarily ſo much otherwiſe engaged, as it muſt have been at the time in queſtion, when we had been in action with the enemy, and ſtill continued in ſight of them for farther engagement. A man muſt be little accuſtomed to naval engagements, who, in ſuch critical and buſy moments, expects great accuracy in marking either the rates of a ſhip's ſailing, or any other particulars; and what commander of a ſhip would be ſafe, if his life and honour were to be decided upon by ſuch an uncertain and fallible teſt.—Former Courts-Martial have been ſo aware of this, that though it is uſual to call for log-books to inſpect them, they are not in ſtrictneſs conſidered as evidence, and ſo Admiral Byng was told at his trial. But notwithſtanding log-books ſhould for the preſent purpoſe be received as admiſſible evidence, the danger of being much influenced by their contents will be the ſame; and in the particular inſtance of the Victory's log, beſides the general objec ion, many ſpecial reaſons will occur to diſſuade relying upon it. None have pretended that her log was hove, ſo that the rate of ſailing is mere gueſs. The log deſcribes the Victory to have laid to in the afternoon of the 27th, from one o'clock till four, during which important hours neither the rate of ſailing or courſe are marked. But the maſter and other officers of the Victory, at the trial of Admiral Keppel, and now, acknowledge that ſhe did not once lie to in any part of that afternoon, and this fact is alſo acknowledged by Admiral Campbell.

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The Victory's log makes the ſecond time of hoiſting the ſignal for ſhips to windward to bear down into the Admiral's wake half after four. But though exactneſs as to the time of hoiſting this ſignal the ſecond time is of great conſequence to a proper underſtanding of the tranſactions of the day, the time is groſsly miſtated; for it has been proved by the written minutes taken on board the Arethuſa, and the concurrent teſtimony of Captain Marſhall and his purſer, that the real time was thirteen minutes after ſix. Again, the Victory's log-book mentions that the ſignals for the Prince George and Bienfaiſant to chace the three French ſhips, was made at four in the morning of the 28th, and that they were called in at nine, which ſuppoſes them to have been chaſing five hours; but it is notorious, from the evidence on the preſent one, that theſe two ſhips were called in within half an hour after the ſignal for chaſing was made.

Theſe errors and falſifications, whether innocently introduced or not, are ſufficient to deſtroy the credit of the Victory's log-book; but there is yet a great deal more to impeach its authority, as to the rate of ſailing. Though the Victory's log marks the rate to have been uniformly two knots from four o'clock till ten at night, yet Admiral Campbell impliedly admitted that the rate was ſome times greater, when he ſaid he did not believe *that the Victory went above three or three and a half knots any part of the time.* This ſhews that he conſiders her rate of ſailing as under-marked. The log of the Foudroyant, which ſhip the Captain proves to have been in her ſtation next a-ſtern of the Admiral from three in the afternoon, nearly correſponds with the Formidable's log, as to rate of ſailing, and, therefore, if the Foudroyant's is not over-marked, the Victory's muſt be under-marked. The maſter of the Victory, and others, repreſent the weather in the afternoon of the 27th, to have been ſqually and unſettled, though not blowing hard. But is it likely that the Victory, under ſo much ſail as ſhe is deſcribed to have had ſet, and during the hours ſhe

was going two points from the wind, ſhould not go more than two knots an hour?—At ſeven the Victory hauled her wind, and kept cloſe to it all night, and till eight carried the ſame ſail as when going from the wind. But ſtill her log allows two knots an hour, as if ſhe went as faſt with much leſs ſail by a wind, as when ſhe was going with more ſail from the wind. All this ſhews how unſafe it is to truſt to the rate of ſailing marked in the Victory's log-book. But I do not mean to have it underſtood, that the Victory's log-book is the only inaccurate one. Probably the rate of ſailing in the Formidable's log was marked with equal incorrectneſs, and if we ſuppoſe her log to have been as much over-marked as the Victory's appears to have been under-marked, this, with the circumſtance of the Formidable's bad ſteering from the want of head-ſail, will account for the difference between the two logs, and reconcile the Admiral's outſailing me. At the ſame time, I do not found any argument in my favour on ſo uncertain a baſis as an entry of the rate of ſailing made on gueſs and random calculation, in the hurry after the engagement. My view is to reſiſt any argument on either ſide from ſo dangerous a ſource, and to draw the attention of the Court to the ſtrong evidence of the correſpondent courſe of the Victory and Formidable, and that unerring teſt, the fact of the Admiral's increaſing his diſtance, notwithſtanding my ſteering the ſame courſe, and carrying all the ſail in my power.

The next article which I conceive to be intended as a charge againſt me, after the ſignal for the line, and that for bearing down into the Admiral's wake, the firſt time of hoiſting, is the latter ſignal, the ſecond time it was made Mr. Keppel, in his defence on the late trial ſays, that this laſt ſignal was made a *quarter before five*. His log-book makes the time *half an hour after four*; and Mr. Moore, who aſſiſted the Admiral's ſecretary, ſpoke on the late trial to the ſame time as the log. Mr. Campbell is ſtill more early in point of time, he having in effect ſaid, that the blue flag was hoiſted again within a few minutes after being

being hauled down, which makes the ſecond time of hoiſting the blue flag to have been *before four*: but all theſe repreſentations are now proved to be contrary to the real truth; each being very remote from it; but Mr. Campbell moſt extravagantly ſo. For fixing this point beyond a doubt, I am obliged to Captain Marſhall, his purſer, and the mate of the Arethuſa, examined at the late trial, all of whom ſwear to the blue flag's not being hoiſted the ſecond time till *thirteen minutes after ſix*, and found themſelves on the written minutes taken at the time. Captain Marſhall when aſked the queſtion upon oath whether the blue flag was flying between thirty minutes after three, and thirteen minutes after ſix, adding an anſwer in the negative.—This alſo is a very operative detection of the falſe ſtatement of time by the Admiral and his officers. It relates to a very material ſignal, it being the firſt made for coming into the Admiral's wake, which could have the leaſt application to me; and as it was the firſt ſignal or notice for enforcing my compliance with the ſignal for a line, it demonſtrated that even the Admiral himſelf did not expect my diviſion to be in a condition to get into our ſtations till after ſix. That he did not look for me, or my ſhips ſooner is alſo apparent from his filling my ſtation with the Red diviſion, till more than half an hour after five: even Sir Robert Harland's Captain having informed the Court that it was not till that time that Sir Robert received the meſſage for quitting the rear, and occupying his proper ſtation. Whether the poſition of the Vice of the Red's diviſion, whilſt in the rear, was or was not ſuch as abſolutely to exclude my diviſion till the former had left it, is a nicety ſcarcely worth contending for with Mr. Keppel; becauſe it being occupied by Sir Robert Harland is not the reaſon I give for being to windward, and a-ſtern of my ſtation, but I only advert to the fact, to corroborate what I infer from the late hour of the firſt enforcing ſignal for calling me into the line. In reſpect to my conduct on ſeeing the ſignal for coming into the Admiral's wake, I

obeyed

obeyed it to the extent of my power: I repeated, and I continued thoſe efforts for fetching the length of my ſtation, in which I had been ſo aſſiduous before, that there was no room for further exertions. The former will be proved by my officers, and is indeed allowed by the witneſſes againſt me. What the impediments were which prevented the latter, particularly our inability to ſet the fore-top-ſail till between ſeven and eight, I have already explained at large.

In leſs than half an hour after the ſecond time of hoiſting the blue flag, or ſignal for bearing down into the Admiral's wake. the pendants of particular ſhips of my diviſion were added to the blue flag. Theſe pendants were repeated on board Captian Marſhall's ſhip at thirty-ſix minutes after ſix; and immediately on being ſeen, they were repeated on board the Formidable. Had the Admiral thought the ſhips of my diviſion in a condition to come into their ſtation in the line ſooner, why did he delay hoiſting their pendants till ſo late an hour? It is alſo obſervable, that the pendant of the Formidable was not among thoſe hoiſted.

Next comes the meſſage to me from the Admiral by Captain Windſor in the Fox; and as my enemies have made the ſuppoſed diſobedience of it ſo frequent a topic of accuſation, it is neceſſary that I ſhould conſider the circumſtance relative to it in a very particular manner; in doing which I muſt be deluded by the moſt unaccountable miſapprehenſion and error, if I am not able to falſify the ſtory about this meſſage almoſt from beginning to end. To examine all its parts with the minuteneſs that is requiſite to diſappoint the unwarrantable inferences from it, I beg the attention of the Court to the time of ſending the meſſage, the time its being delivered, and the words of it.

Admiral Keppel in his defence on the late trial, aſſerts, that he ſent the meſſage at five o'clock. Capt. Windſor, who carried it, and other witneſſes, have ſworn even to a much earlier time; but they are all falſified by the concurrent teſtimony of Captain Marſhall,

Marſhall, Mr. Graham, his purſer, Mr. Gawſey, mate of the Arethuſa, and the written minutes of the purſer, taken when the ſignals where repeated; evidence which Mr. Keppel himſelf cannot controvert with any grace, after the great encomiums he has ſo juſtly paſſed upon the extraordinary accuracy of Captain Marſhall in repeating ſignals. If Captain Marſhall, his officers, and the minutes in writing, taken by his direction at the time, are to be depended upon more than other witneſſes ſpeaking from mere recollection, the ſignal for the Fox to come within hail of the Victory, to *receive* the meſſage, was not till *thirty-two minutes after five*, that is *about half an hour* after it is repreſented by Mr. Keppel, his officers and Captain Windſor, to *have been delivered.*—If Captain Marſhall, whoſe ſtation was three miles to windward of the Victory's beam, is to be credited, Captain Windſor could not have leſs than that diſtance to go before he could come within hail of the Victory to receive the meſſage, and muſt have been half an hour in going to her; and the written minutes taken under the direction of Captain Marſhall prove, that Captain Windſor did not arrive within hail of the Victory in leſs than half an hour; for they take notice that the ſignal for the Fox was hauled down at three minutes after ſix. Theſe facts together demonſtrate, that the time of Admiral Keppel's ſending the meſſage was, *not at five*, or *a little before*, but *a little after ſix.*

Mr. Keppel, ſpeaking on his oath has ſaid, that he called the frigate which carried the orders to Sir Robert Harland to go to his proper ſtation in the van, and which was the Milford, at the ſame time that he called the Fox to carry the meſſage to me. This leads to fixing *five* as the hour of ſending the meſſage by the Fox. But Admiral Keppel is moſt directly contradicted by Captain Marſhall, and his purſer alſo ſpeaking on oath, and their written minutes; according to which the Milford's ſignal was made ten minutes before four, and hauled in thirty-three minutes after four; but the Fox's ſignal was not made till thirty-

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two minutes after five, and not hauled in till *three* minutes after *ſix*. In other words, inſtead of Mr. K.'s ſending theſe two frigates at or about the ſame time, there was a difference *of an hour and a half* between diſpatching them. This ſtriking error, in *antedating* the diſpatch of the meſſage by the Fox—*one hour and a half*, may, as I can plainly ſee, be convenient to the plan of my deſtruction; but how it is otherwiſe to be accounted for is the buſineſs of Mr. Keppel to explain. I hope for his own ſake, that he confounded the Proſerpine's ſignal with the Milford's.—The Proſerpine's ſignal was hoiſted twenty-two minutes after five, and hauled in two minutes after ſix; as appears from the ſame written minutes taken on board the repeating frigate. This brings the Proſerpine and Fox within hail of the Victory one minute after each other. But unfortunately for Mr. Keppel, the Milford and not the Proſerpine, was the frigate ſent with the orders to Sir Robert Harland; nor can Mr. Keppel avail himſelf of the apology I have thus created for him, without ſacrificing the credit of Captain Windſor, Captain Berkeley, Lieutenant Bertie, and theſe officers of the Victory; particularly Admiral Campbell and Mr. Rogers, who have poſitively fixed ſending the Fox at a ſo much earlier time in the afternoon, nor without acknowledging the truth and accuracy of the officers of the Formidable.

The time of *delivering* the meſſage ſent by the Fox, is falſified in the ſame extraordinary way as the time of *ſending* it. Captain Windſor, who carried the meſſage, ſwore, at the late trial, that he came within hail of the Formidable, and delivered the meſſage to me *nearly about half an hour after five*; and being queſtioned at the preſent one to the ſame point, he repeated the ſame words, but the Court is in poſſeſſion of that, which abundantly proves that Captain Windſor is ſtill groſsly erroneous in ſpeaking of time. It is already ſhewn that he did not *receive* the meſſage *till after ſix*, and he allows he was half an hour in getting to the Formidable, which, without more, renders his

delivery

delivery of the meſſage to me at *about half an hour after five* impoſſible; but other circumſtances concur to diſprove the evidence of Captain Windſor in a ſtill greater extent. He allows himſelf only *half an hour* to carry the meſſage; but the Formidable is proved to have been three points on the Victory's weather-quarter, and three miles diſtant; and Captain Windſor acknowledges, that to fetch the Formidable, he made a circuit, going to leeward of all the ſhips of the centre diviſion that were formed a-ſtern of the Victory, and was forced to change his tack; all this ſo increaſed the ſpace he had to traverſe, that though he went ſix or ſeven knots, as he calculates, it muſt have required conſiderably more than an hour before he could reach me. This poſtpones the time of delivering the meſſage till between *ſeven* and *eight* in the evening, and correſponds with the account of my officers, who are all poſitive that the Fox did not come within hail of the Formidable till near about *ſun-ſet*, which on the 27th of July, and in the latitude of Uſhant, where we then were, is a *little after half paſt ſeven.*—Other corroborating proofs that this was the time I received the meſſage, are, that we had repeated the blue flag the ſecond time of its being hoiſted, which was at *thirteen minutes after ſix*; and that we had alſo repeated the pendants of particular ſhips of my diviſion, which, by Captain Marſhall, and the written minutes taken on board his ſhip, were not hoiſted till thirty-ſix minutes after ſix, a conſiderable time before the Fox hailed us. It is further aſcertained by the circumſtance of our not being able to bend our fore-top-ſail till a little before *eight*; in doing which, both Captain Windſor and Lieutenant Bertie obſerved us to be employed, whilſt the Fox was near the Formidable. Thus, from the evidence of Capt. Marſhall, whoſe moſt juſtly diſtinguiſhed accuracy as a repeater of ſignals, the Court has heard ſuch warm encomiums upon, from the written minutes taken on board his ſhip at the time, and from a combination of circumſtances, not gleaned without great labour and difficulty, out

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of the great maſs of evidence on the late, and preſent trial, the reſult is, that a meſſage ſworn to have been delivered to me at *half paſt five*, was not really delivered till *half paſt ſeven*. How material the error of two hours in ſtating this meſſage is, will ſtrike every one who hears me, when it is recollected what an influence time has on the ſuppoſed import of the meſſages. If the meſſage was delivered at *half an hour after five*, it might not have been too late to re-engage, had ſuch been the Admiral's intention, and other circumſtances, independent of time, did not obſtruct him; but at *a quarter of an hour after ſeven* in the evening, that is *a quarter of an hour* before the meſſage reached me, it is confeſſed by Mr. Campbell to have been ſo late, that the Admiral had then given up all thoughts of re-engaging.

There is almoſt as great a diſagreement about the words of the meſſage, as about the time of its being ſent, and received. According to Captain Windſor, Lieutenant Bertie, and the officers of the Victory, the meſſage delivered to me imported, not only that the Admiral *wanted the ſhips of my diviſion* to come down into his wake, but farther, that it extended to *me*, as well as the ſhips of my diviſion, and that he *waited for me to renew the action*. The firſt part of the meſſage I acknowledge receiving; but I deny that the meſſage repeated to me mentioned either *me*, or the *waiting for me to re-engage*; and the few on board my ſhip who were preſent when it was delivered, agree with me in their account of it, for they ſay that it was ſimply confined to the Admiral's wanting the ſhips of my diviſion. On this contrariety of evidence about the words, and import of the meſſage, it is the office of the Court to decide who are beſt entitled to belief, and which of the two repreſentations carries with it moſt appearance of probability.

But it may not be improper to ſubmit to the Court ſome few conſiderations againſt yielding to the ſeeming weight of evidence for the terms of the meſſage as it is ſtated againſt me.

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The witneſſes who have ſpoken ſo poſitively to mentioning that the Admiral waited for me to re-engage, ſtand convicted of the groſſeſt errors in their relation, both of the time of receiving the meſſage, and of the time of delivering it; in the former more than *one hour*; in the latter more than *two*. They own too, that they ſpeak the words entirely from memory, never having committed them to writing. But how can the Court ſafely truſt to the frail memory of perſons thus exceedingly erroneous as to the time of the meſſage for the *words* of it, in preference to thoſe againſt whoſe teſtimony no ſuch objection lies.

The Admiral *was not waiting for me*, nor had he been waiting any part of the afternoon; but as Admiral Campbell acknowledges, the Victory had been the whole afternoon under the ſame ſail, which was more than the Formidable could carry till her fore-top-ſail was bent, which was not till about eight o'clock. How improbable is it that Admiral Keppel ſhould ſend me a meſſage to tell me, that he was waiting for me, when he was not waiting? As it has been aſſerted, that he had been waiting for me and my diviſion the whole afternoon, to re-engage, and ſo early as half an hour after four was become wearied with fruitleſs expectations, what was the reaſon that no enforcing ſignal was made either for me, or my diviſion till thirteen minutes after ſix? Why were the ſignals for particular ſhips of my diviſion poſtponed till thirty-ſix minutes after ſix? As I judged, it would have been unreaſonable to expect that my diviſion, which had ſuffered ſo particularly in the action, and were lateſt out of it, ſhould be fit to take their ſtations in the line ſooner; and from his conduct in not making the particular ſignals till more than half an hour after ſix, it ſeems as if the Admiral was of the ſame opinion. If the Admiral was diſſatisfied with not ſeeing theſe laſt ſignals immediately complied with, why did he not expreſs his diſappointment by going a ſtep further and making ſignals for them to make more ſail? In reſpect to my ſhip, the particular

lar ſignal for it was never made; but if my being out of the line was ſo unaccountable to him at half an hour after four, why did he omit to make my particular ſignal *two hours after*, when he called in the ſhips of my diviſion? If he was ſo impatient to re-engage, and I was the obſtacle, would not making my particular ſignal have been a more expeditious way of informing me, than ſending a meſſage which took up more than an hour in carrying? If he meant to be delicate, as he profeſſes, would not the *ſilent*, and *diſguiſed* cenſure of a ſtrong ſignal have been equally expreſſive, yet more delicate than the *harſh* and *coarſe* language of a *trimming* meſſage? If the object of the meſſage to me, was, to renew the engagement, why was he ſo long before he ſent it, that it could not reach me till conſiderably after the lateſt time in the evening fixed by himſelf and his friends, for another action?

Other circumſtances which operate againſt the idea of an intention to re-engage in the afternoon of the 27th, and conſequently againſt a meſſage to that effect, might be enlarged upon; ſuch as, ſuffering the van diviſion to occupy my poſt next the enemy, till after five; the late hour of the Red's diviſion's reſuming their proper ſtation in the van; the improbability of meaning to renew the engagement with my diſabled, unrefitted, and ſtill diſperſed diviſion, inſtead of Sir Robert Harland's freſh and collected ſhips, and the incomplete forming of the centre diviſion, even after ſix. But it would be almoſt endleſs to purſue theſe topics, and therefore I haſten to a more deciſive indication of the deſigned import of the meſſage, I mean, Admiral Keppel's own comment.

In Admiral Keppel's public letter about the engagement, he declares, that he allowed the French to re-form their line in the afternoon of the 27th, with an expectation that they would try their force with us the *next morning*. Is not this language an avowal by Mr. Keppel, that the next morning was the time he had in view for re-engaging? The log-book of the

Victory

Victory is of the ſame tendency; for it takes notice of *preparing to renew the engagement at daylight the next morning*; but is without one ſyllable about renewing the action the preceding afternoon. When it was firſt inſerted in the public prints, that the meſſage to me was to ſignify, that the Admiral waited for me and my diviſion to renew the action, I appealed to Mr. Keppel to protect me againſt ſo cruel a miſrepreſentation, aſking him, whether it was poſſible that he ever ſhould ſend me ſuch a meſſage? And though he declined doing me the full juſtice I expected, yet he would not ſay, that he had ſent ſuch meſſage; but replied in theſe remarkable terms, *I am told that ſuch words were uſed.* But if he had been convinced that ſuch was the meſſage, could he have heſitated avowing it? would he have referred to the report of other perſons? His language *upon oath* is of the ſame undecided, ambiguous kind. *He will not ſay that he ſent that meſſage; he cannot truſt to his own remembrance of it; he cannot exactly recollect the words.* He leaves the *labour* and *hazard* of recollection to his own officers, particularly Admiral Campbell, whoſe ill offices I have experienced in a great variety of inſtances. But whatever the terms of the meſſage were, whether it was for my diviſion to come into their ſtations, or whether it was that the Admiral waited for me and my diviſion to renew the engagement; I truſt that I ſhall be found to have done all that could be expected at the very late hour I received it. Whatever might be the Admiral's intention, when he ſent the meſſage to me, it did not come to me till after that time was paſſed, at which Rear-Admiral Campbell confeſſes that the Admiral had relinquiſhed every idea of a further engagement till the next day. Convinced that a night engagement was not the object of the Admiral, it only remained for me to continue my efforts for compleating the repairs of the rigging, more eſpecially in ſetting my fore-top-ſail; in which I was ſo ſucceſsful as to get into my ſtation in the line, and to be quite ready for action again before daylight in the morning.

As to ſending a meſſage to inform the Admiral of my inability to get the length of my ſtation, making a ſignal of diſtreſs, or ſhifting my flag, they did not ſtrike me at the time, as either neceſſary or applicable to the circumſtances under which I acted; nor do I yet know of any reaſon, which, on a review of my ſituation in the evening of the day of the engagement, ſhould induce ſuch an opinion. But I have already expended ſo much time in my obſervations on the ſubject of the meſſage, that I find myſelf forced to poſtpone the particular reaſons, which may evince the propriety of my not adopting either of thoſe meaſures, till the cloſe of the examination of my witneſſes, when I hope to be indulged by the Court with a hearing of ſuch further remarks as ſhall then appear neceſſary for my final juſtification.

After the meſſage, I know only of two other articles hinted at againſt me, which require the leaſt notice; and in reſpect of them very few words will be neceſſary.

One is, that I did not carry my diſtinguiſhing lights the evening of the 27th. But my witneſſes, particularly ſome whoſe buſineſs it was to attend the lights, will prove the fact of my carrying them,—ALL of them. When this matter was firſt queſtioned, I really thought it probable, that the top-light was not kept burning; becauſe I recollect being told of ſome difficulty about it, from a wound the lanthorn had received in the action, and that I obſerved it was of no great conſequence; but I gave no orders to countermand any of the lights; and always took for granted that my ſtern light was kept burning the whole night.

The remaining article relates to the ſituation of my ſhip at day-break, the morning of the 28th. Sir Charles Douglas, from an obſervation he made at the dawn of day, conceives that he then ſaw my ſhip greatly a-head of my ſtation in the line. But though I have not the leaſt doubt that he ſays what he believes to be truth; yet I am perſuaded he muſt have miſtaken ſome other ſhip for mine. In the courſe of the

the trial, I ſhall examine ſome witneſſes to prove that I really was a-ſtern of the Admiral at the time when it is ſuppoſed that I had got a-head of him.

I now draw near to a concluſion for the preſent, having only to remind the Court in what light Admiral Keppel viewed my behaviour on the two days to which the Court's inquiries are limited, before the commencement of thoſe differences from which the preſent trial originates.

The day but one after the action, I viſited the Admiral on board the Victory. He received me with his uſual marks of regard, friendſhip, and confidence, without the moſt diſtant hint of being diſſatisfied with the leaſt part of my conduct; on the contrary, he communicated to me the draught of a letter he intended to ſend to the Admiralty, either the ſame, or one very little different from that afterwards publiſhed in the Gazette: he diſcourſed with me on ſeveral parts of the letter; and when he came to the part in which he praiſes Sir Robert Harland and me by name for *our ſpirited behaviour*, he ſaid he thought it beſt to mention it in a general way, without particularizing; and this came from him in ſuch a manner, that I thought he alluded to my ſhips having been ſo much more engaged, and having ſuffered ſo much more than Sir Robert Harland's.

Is it poſſible that Admiral Keppel ſhould be capable of ſo much duplicity as to have thus commended me in a public letter, in the ſame ample manner as Sir Robert Harland, and to have thus communicated with me on the ſubject of it, if he had then entertained the leaſt ill opinion of any part of my conduct?—In this Court, Mr. Keppel, being on his oath, endeavoured to qualify his commendation of me by narrowing it to my behaviour in *time of action*, and ſpoke as if his letter was ſo expreſſed.———But the letter itſelf contains no ſuch qualification, and I did not wonder to ſee him under embarraſſment, when he ſo diſingenuouſly endeavoured to controul the effect of his open praiſe, by having recourſe to ſecret and mental reſervation. Soon after

we arrived at Plymouth, Mr. Keppel received a letter from the Secretary of the Admiralty, which contained his Majeſty's approbation of my conduct, repeated in Mr. Keppel's own words, and expreſſed to be founded upon his repreſentation. This letter was alſo ſhewn to me by Admiral Keppel. Before we left Plymouth for a ſecond cruize, he wrote a ſecond letter to the Admiralty, in which he once more included me in the praiſe and commendation of the officers under him.

After ſuch unqualified and deliberate acts of approbation of my conduct on the 27th of July laſt from Mr. Keppel, as I have here enumerated, it will be difficult for him to account for his preſent cenſures of my conduct on the ſame day, without either fixing on himſelf a charge of the greateſt duplicity, or of ſuffering his evidence on oath to be influenced by the ſpirit of anger and revenge.

Here, Gentlemen, I cloſe my defence for the preſent, ſurrendering both my life and honour into the hands of the Court, with a full aſſurance that I ſhall meet with the ſame protection from you as each would expect from his brother officers in a like ſituation, and that you will not allow truth and innocence to be made a ſacrifice to the clamour and noiſe of a party, or to the prejudiced teſtimony of perſons avowedly acting from the dictates of private malice.

Gentlemen, I will detain you with only one ſentence more. My mind ſees no medium between life with entire honour, and death without; and I ardently wiſh that your judgment, be it what it will, may be directed by the ſame alternative.

SIXTEENTH DAY. THURSDAY APRIL 29.

At half paſt nine o'clock the Court reſumed their proceedings, when

ADMIRAL SIR THOMAS PYE, KNIGHT, WAS CALLED IN AND SWORN.

*Sir H. Pal.* It being very material to me, in the courſe of my defence, to authenticate ſignals that were flying on the 27th of July, I call Sir Thomas Pye relative to a paper which was delivered to him whilſt ſitting as Preſident of the late Court-Martial, and which is now in the hands of the Judge Advocate, written by William Chewſey, late mate on board the Arethuſa, and now a priſoner in France, which was delivered by Captain Marſhall to Sir Thomas, and on which I beg leave to aſk, if whilſt the late Court-Martial was ſitting you received a paper of ſignals, as Preſident of that Court-Martial, from Captain Marſhall, which you delivered to the Judge Advocate?

*A.* I do recollect a paper was delivered into my hand, which I handed down to the Judge Advocate, but at this diſtant period, I cannot recollect whether that paper be the ſame or not.

*J. Adv.* This paper was delivered at the late trial by Captain Marſhall to Sir Thomas Pye, I received it then as an authentic paper, and as ſuch laid it before the Court, it was delivered when William Chewſey was in the Court, who ſwore it was written by him at the time of the engagement, and, in conſequence of this, I wrote a notation of its being received into the Court on the 19th January 1779, which was atteſted by my own ſignature.

Theſe circumſtances of authenticity, to which the Judge Advocate made oath, were held to be ſufficient.

*Sir Thomas Pye withdrew.*

*Sir H. Pal.* Then give me leave to aſk a few queſtions from the Judge Advocate relative to thoſe minutes. Was that paper ſworn to by Mr. Chewſey to be his hand writing?

*A.* It was.

*Q.* Did he ſwear that it was a true copy of the original minutes kept on board the Arethuſa?

*A.* He ſaid it was.

*Q.* Did he ſwear that the original minute book was afterwards loſt?

*A.* He did, and that the original minutes were taken by a pencil from which he took this copy.

*Q.* Did he ſwear that he delivered that paper to Captain Marſhall?

*A.* He did.

*Q.* Was it made to appear that that paper was delivered to Sir Thomas Pye by Captain Marſhall?

*A.* It was not made appear to the Court, but it was perfectly underſtood by Sir Thomas Pye and myſelf.

*Q.* At what time was it made appear, by that paper, that the yellow pendant at the mizen-top-maſt head, the Milford's ſignal, was hoiſted and hauled down?

*A.* At fifty minutes paſt three, hauled down thirty-three minutes paſt four.

*Q.* At what time was the yellow pendant at the main-top-maſt head, being the Proſerpine's ſignal, hoiſted, and when hauled down?

*A.* At twenty-two minutes after five, and was hauled down at two minutes paſt ſix.

*Q.* At what time was the yellow pendant at the ſtarboard main-top-ſail yard-arm, being the Fox's ſignal, hoiſted and hauled down?

*A.* Thirty minutes paſt five, and hauled down at three minutes paſt ſix.

*Q.* At what time does it appear that the blue flag at the mizen-peak was firſt hoiſted, for ſhips to windward to bear down, and when hauled down?

*A.* Twenty-four minutes paſt three, and hauled down thirty minutes paſt three.

*Q.* Does it appear that the blue flag was hoiſted any time between thirty minutes paſt three, and thirteen minutes paſt ſix?

*A.* It does not.

*Sir H. Pal.* Is then the whole of that paper admitted as authentic evidence by the Court. *Preſident.*

*Preſident.* I believe it is.

Captain Duncan here obſerved, that he thought it would be improper to admit of partial quotations from that paper of ſignals. If any part was admitted, it ought all to be ſo. The moſt eſſential of all ſignals, was omitted by the Priſoner, the ſignal for the line, which he thought it neceſſary ſhould ſtand upon the minutes, if the others did.

The Court was cleared, and upon a few minutes ſpent in deliberation upon this point, it was declared that the whole of the paper was admitted.

The Priſoner here addreſſed the Court, and informed them there was a miſtake in the defence he had delivered into the Court which he begged leave to correct. It was where the Captains were mentioned who had ſeen the Formidable on the larboard tack, Captain Marſhall, Sir W. Burnaby, and the Captain of the Worceſter; the name of Sir William Burnaby was to be ſtruck out, as he had not ſaid ſo.

SIR WILLIAM BURNABY, CAPTAIN OF THE MILFORD FRIGATE, CALLED IN AND SWORN.

*Q.* When you received orders from the Victory on the 27th of July, was there any other frigate near to the Victory receiving orders at the ſame time?

*A.* None that I ſaw or heard of.

*Q.* Did you take notice of the rigging and ſails of the Formidable that afternoon, and what obſervation did you make?

*A.* They appeared to me to be very much diſabled the whole afternoon. I obſerved her particularly about on hour after coming out of action.

CROSS-EXAMINATION.

*Sir Chal. Ogle.* What time did you leave Admiral Keppel to go to Sir Robert Harland?

*A.* About three quarters after four.

*Q.* At what time did you join Sir Robert?

*A.* In a very few minutes afterwards, before five o'clock.

*Preſident.* As you were ſo near, I ſhould be glad to know what general ſignals were flying on board the Victory at the time you left her?

*A.* I do not particularly remember, I think the ſignal for the line of battle was flying among other general ſignals.

*Sir Chal. Ogle.* Did you perceive it on board the Formidable then, or any other time that afternoon.

*A.* No, it does not occur to me that I did; but I was at a great diſtance from her.

*C. Colpoys.* Was the Milford the frigate appointed to attend the Blue diviſion?

*A.* She was.

*Q.* Where was the Milford the whole or the greateſt part of the afternoon after the fleet were on the ſtarboard tack?

*A.* To leeward a good way, and a-head of the Formidable; and about ſeven I got into my ſtation, which was nearly on the weather-beam, or the weather-bow of the Formidable.

*Q.* At that time what was the condition of the Formidable with reſpect to her ſails and rigging?

*A.* She appeared to be ſtill much damaged with reſpect to both.

*Q.* What was her ſituation with regard to the Victory at that time?

*A.* She was a good way a-ſtern, and the Victory a good way to windward.

*Q.* How nearly was you then to the Formidable?

*A.* Within a mile or ſo.

*Q.* What general ſignal had ſhe out at that time?

*A.* I do not know.

*C. Duncan.* Did you, at any time in the afternoon ſee the blue flag at the mizen-peak on board the Victory?

*A.* I certainly muſt have ſeen it, but I cannot aſcertain the time, ſo as to anſwer poſitively to that queſtion.

*Q.* Did you ſee it on board the Formidable before?

*A.* I have ſaid before that I do not recollect to have ſeen it.

*Q.* Did

Q. Did you ſee the Fox's ſignal at any time that afternoon to ſpeak with the Admiral?

*A.* I do not remember to have ſeen it.

Q. Did you ſee her at any time bear down to the Admiral?

*A.* I do not recollect to have ſeen the Fox the whole afternoon after coming out of the action.

*C. Colpoys.* Do you recollect ſeeing any frigate come near the Formidable, and at what time?

*A.* No, I do not.

Q. Did you ſee the Formidable in the courſe of the night?

*A.* I do not remember to have taken any particular notice of her. I left orders for my ſhip to keep her ſtation with reſpect to her.

Q. Do you know whether the Formidable had any diſtinguiſhing lights?

*A.* I do not remember to have ſeen any.

Q. Was you on deck at daybreak in the morning of the 28th, and did you take notice of the ſituation of the Formidable?

*A.* I did not take particular notice; my ſignal was made to go on board the Victory, which I did, and therefore did not take any notice of her.

*Withdrew.*

CAPTAIN BEAZLEY, OF THE FORMIDABLE.

Q. How near were the neareſt of our ſhips a-head and a-ſtern of the Formidable when ſhe went into action?

*A.* The ſhip a-head was half a mile, and the ſhip a-ſtern near a mile, to the beſt of my recollection.

Q. After the Formidable was wore in the rear of the enemy, were there any preparations for renewing the action?

*A.* Officers and ſhip's company ordered immediately to quarters.

Q. How near were we at that time to the enemy?

*A.* Within random ſhot.

Q. Were there any ſhot fired at us at the time?

*A.* When

*A.* When the ſhip was in the act of wearing, two or three ſhot were fired on us from the enemy's rear.

*Q.* From the circumſtances that you have deſcribed the Formidable to be in, I aſk you, whether, notwithſtanding any ſignals that might be made, or meſſages that might be ſent, was it poſſible for her to get into her ſtation in the line?

*A.* It was impoſſible, unleſs the Admiral had ſhortened ſail to give us that opportunity.

*Q.* Was it ſafe to ſet more ſail upon the fore-maſt ſooner than it was done?

*A.* By no means ſafe in any reſpect whatever.

*Q.* Can you give an account of the damages? if you can, produce them.

*A.* I have them in writing, if the Court will permit me to produce them.

*Court.* By all means.

The paper was produced. The Judge Advocate read it, and it contained a technical enumeration of damages in maſts, ſails and rigging, &c.

*Sir Chal. Ogle.* Do you deliver this paper as authentic, from your own knowledge?

*A.* To the beſt of my knowledge.

*Sir H. Palliſer.* Have you the carpenter's account of damages?

*A.* I have.

It was produced and read by the Judge Advocate, and alſo contained a long relation of damages, particularly in the hull of the Formidable.

*Q.* Were any of the lieutenants ſo ill as to be unable to come upon deck on the 27th of July?

*A.* Yes, three lieutenants were unable; the boatſwain was killed in the action, and this loſs very ſenſibly retarded the repairing of the ſhip; no better officers ever were on board of any ſhip than thoſe. Not a man on board knew where the boatſwain had ſtowed his ſtores, as only fourteen Greenwich penſioners, nine men from the Hawke ſloop, and two or three others, were all the people on board, who were with the ſhip when ſhe was fitted out at Chatham.

*Q.* What

*Q.* What time was orders given for preparing for action again on the morning of the 28th, and when did the drum beat to arms?

*A.* At two in the morning. When the officers had repaired to their quarters, we bore up, and took our ſtations in the line before the day was well open.

*Q.* Did the men on board the Formidable behave with ſpirit and good order?

*A.* Every praiſe is due from me both to the officers and ſhip's company, for their ſpirit in the action, and for their behaviour in repairing, without having a moment to refreſh themſelves till ten o'clock at night.

*Q.* Was any liquor given to the men till their work was done; at what time was that, and how much?

*A.* None to my knowledge was given till after ten at night, when the Admiral ordered half a pint of wine to be given to each, to refreſh them after their fatigue, and as a mark of his approbation for their good behaviour.

*Q.* Did I expreſs any anxiety, during the afternoon and the night, to get the ſhip refitted, and to get up with the Admiral?

*A.* Very anxious the whole afternoon and night; and, to my certain knowledge, the Vice-Admiral was never off the deck fifteen minutes together from ten in the morning till ten at night, when the ſhip was refitted. I never left the ſhip myſelf, and therefore can ſpeak to it poſitively.

*Q.* Did I deſire you, in the afternoon, to go upon the fore-caſtle yourſelf, and why?

*A.* I received your directions to go to the fore-caſtle to attend to the repairs of the fore-maſt, and to the refitting of the fore-rigging, acquainting me at the ſame time that you would attend to the repair of the damages of the main and mizen-maſts yourſelf, attended by two lieutenants; at times I went aft from the fore-caſtle to the quarter-deck.

CROSS-EXAMINATION.

*C. Duncan.* You have ſaid, that there were no ſhips near a-head or a-ſtern of you when you went into action;

tion; pray, how long did you continue in action before you perceived any ſhips near you, and what were their names?

*A.* I remember a ſhip paſſing under the Formidable's lee, while we were in action, but I do not recollect her name, nor know how long we had been in action.

*Q.* Was that ſhip one of thoſe which were a-head or a-ſtern of you, and were there any ſhips nearer to you than you have deſcribed?

*A.* I do ſuppoſe it was one of the ſhips that were a-ſtern of us; and what makes me think ſo, is that ſhe came up with her top-gallant and all her other ſails ſet, except her main-ſail, and we were with our mizen-top-ſail a-back, and all our ſtay-ſails heezed off between the main and fore-maſt. When the Formidable begun the action, the Ocean was on our lee-bow, and a little a-head to the beſt of my recollection, about four cables length. There were no other ſhips nearer to my knowledge. The enemy was paſſing us upon the ſtarboard ſide.

*Q.* Do you recollect what number of ſhips were with you at ſun-ſet?

*A.* I only remember two ſhips, which I took to be the Egmont and America, but I cannot ſpeak poſitively to them.

*Q.* When you bore down into your ſtation, as you ſay, at two o'clock, or half paſt two, did you then perceive the Victory's lights, and at break of day what was the poſition of the Formidable from the Victory?

*A.* I have already anſwered that queſtion. Before we bore up, I could plainly perceive the three lights in the ſtern, and the light in the top on board the Victory; and when we had got into our ſtation, the ſtern light and the top light were brought into one; and at day-break we were a-ſtern of the Victory, right in a line; as nearly as I can charge my memory, the Ocean was the next ſhip a-ſtern, and one of the enemy's ſhips was a mile to leeward.

*Q.* What

Q. What diſtance do you ſuppoſe the Ocean was from you?

*A.* About two or three cables length, but I cannot ſpeak poſitively.

Q. Do you recollect what ſhip was a-head of you?

*A.* I do not.

Q. What time did you bring your fore-top-ſail to the yard?

*A.* In the morning of the 28th, when the fleet lay to with their heads to the S. W.

Q. Were the fore-top-gallant yard, and fore-top-gallant maſt acroſs all the afternoon, or was the former got down?

*A.* The fore-top-gallant yard was got down between ſun-ſet and dark, and the fore-top-gallant maſt ſtruck and hung in the top rope.

*Preſident.* Was the fleet lying to at that time, or did you keep your way?

*A.* No, ſhe would not ſteer kindly within a point one way or other.

*C. Peyton.* Can you aſſign any reaſon why the fore-top-gallant yard was not cut down, and fore-top-gallant maſt ſtruck before?

*A.* I judged it dangerous to ſend men to the fore-top-maſt head till the maſt was ſecured, expecting it muſt have went by the beam if an attempt had been made, from the rottenneſs of the maſt, and there being only one fore-weather ſhroud ſtanding.

*C. Robinſon.* You obſerved you did not bring a new fore-top-ſail to the yard till the morning of the 28th; had you not repaired the fore-ſail that was to the yard, ſo as to make it uſeful in the afternoon or night of the 27th.

*A.* No, we had no opportunity, the ſail being ſet till the fleet brought to in the morning of the 28th, with their heads to the northward.

*Withdrew.*

JOHN

JOHN BICKERSON, *Carpenter on board the Formidable called in and ſworn.*

*Sir H. Pal.* I deſire you to give an account of the condition of the fore-maſt, and if you have any pieces of it, produce them to the Court.

He produced (after giving an account of the dangerous wounds the maſt had received) a large paper bag of rotten touchwood, which he ſwore he had taken out of the heart of the Formidable's fore-maſt. Capt. Duncan obſerved it was taken out ſince ſhe came to Portſmouth; but the Carpenter ſaid a larger quantity was taken out at Plymouth, on her return from ſea, which was not reſerved as not being expected to be wanted, but that it was a fact which the workmen in that yard could atteſt.

*C. Linzee.* Did you take notice of the rottenneſs of the maſt, on inſpecting the wound immediately after coming out of the action?

*A.* I did not take notice of the rottenneſs of the maſt till we came into Plymouth ſound.

*Q.* At what time in the afternoon after the action was the fore-maſt fiſhed?

*A.* The fore-maſt was not fiſhed at all till we came into Plymouth ſound.

*Q.* What time did you ſet about ſecuring the fore-maſt?

*A.* Immediately.

*Q.* What work did you do to it?

*A.* We ſecured the chain-plates.

*Q.* Was any thing done at that time to any of the top-maſts?

*A.* The main-top-maſt we reefed, and cut the heel off next morning.

*Q.* Did you diſcover the rottenneſs of the maſt at, or ſoon after the time of the action?

*A.* No, not till the ſhip came into Plymouth ſound.

*C. Bayne.* Were any other repairs done to the maſts or yards before you got into Plymouth?

*A.* We

*A.* We ſet about fiſhing the mizen-maſt, on the evening of the 27th, with an anchor ſtock.

*Q.* Were there any other?

*A.* No other, but what I have mentioned about the main-top-maſt.

*Q.* What part of the ſhip was you in on the evening of the 27th?

*A.* On the quarter-deck all the evening and night fiſhing the mizen-maſt.

*C. Colpoys.* Had you been on the fore-caſtle any part of the afternoon?

*A.* I had been there to take an account of the chain plates that were ſhot away.

*Q.* Did any one mention to you the fore-maſt having been found rotten?

*A.* No one did at that time.

*C. Bayne.* How many chain-plates were ſhot away?

*A.* Three, on the ſtarboard ſide.

*Q.* When were they repaired?

*A.* We finiſhed them the next morning.

*Withdrew.*

CAPTAIN KINEER, LATE LIEUTENANT ON BOARD THE FORMIDABLE, CALLED IN AND SWORN.

*Q.* How near to the enemy did the Formidable begin to engage.

*A.* Within muſket ſhot.

*Q.* How long was ſhe engaged?

*A.* About an hour and forty minutes.

*Q.* Do you recollect, that after getting out of action, orders were given to wear the ſhip and ſtand after the enemy, in expectation that the Admiral was coming up to renew the engagement?

*A.* Yes, and the ſhip was wore in conſequence thereof.

*Q.* Did the ſternmoſt ſhip of the enemy fire at the Formidable whilſt ſhe was wearing?

*A.* She fired one or two ſhot at her, when ſhe came under the Formidable's counter.

*Q.* Were

*Q.* Were the officers and men ordered to their quarters, in expectation of going into action again?

*A.* Immediately.

*Q.* Did you obſerve the French fleet begin to wear, while we lay with our heads towards them?

*A.* Three ſhips, I think, drew out of the French fleet, and pointed towards the Formidable.

*Q.* Did you underſtand that to be the reaſon that orders were given to wear the ſhip again to join the fleet?

*A.* I underſtood ſo from Captain Beazley.

*Q.* After we had wore, did you obſerve the motions of thoſe three ſhips?

*A.* No, Sir, I did not.

*Q.* Did you obſerve that the Victory was ſtanding towards the Formidable, while the Formidable was ſtanding towards her?

*A.* Yes, I did.

*Q.* Did they afterwards meet?

*A.* The Victory paſſed the Formidable to windward, upon different tacks.

*Q.* In the ſituation that you ſaw the Victory when ſtanding towards her, could a ſignal be ſeen at the Victory's mizen-peak?

*A.* I think not.

*Q.* Whilſt the Formidable was ſtanding towards the Victory, was any ſhip between them in a line a-head of the Victory?

*A.* None.

*Q.* What did the Victory do after ſhe paſſed the Formidable?

*A.* She wore under the Formidable's ſtern, and ſtood to the ſouthward.

*Q.* Did you obſerve what courſe ſhe ſteered?

*A.* For a ſhort time, I believe, ſhe kept her wind, and after that, two points from the wind.

*Q.* How did the Victory's ſteering, as you have deſcribed, place the Formidable with reſpect to her?

*A.* Nearly in her wake.

*Q.* In half an hour after the Victory wore under

our

our ſtern, what diſtance do you think ſhe might be from us?

*A.* About half a mile, or little more.

*Q.* Was that within the Formidable's proper diſtance for her ſtation in the line?

*A.* Yes, Sir.

*Q.* Did the Victory always outſail the Formidable under the ſame ſail?

*A.* The Victory always did.

*Q.* Did the Victory increaſe her diſtance the whole afternoon, or how?

*A.* I took very little notice of the Victory after ſhe kept away.

*Q.* When you did take notice of her at any time, was the diſtance increaſed?

*A.* She was conſiderably further diſtant from the Formidable in the evening, than when I laſt took notice of her.

*Q.* Did you at times take notice how the Formidable ſteered with reſpect to the Victory?

*A.* Keeping the Victory in general about a point open on her lee-bow.

*Q.* Was that a proper courſe to come, to fetch her diſtance in the line?

*A.* I think it was.

*Q.* When did you obſerve the Red diviſion form in the rear of the Victory?

*A.* I do not recollect ſeeing them forming. I ſaw them there.

*Q.* Do you recollect taking notice where the French fleet was at that time?

*A.* They were forming their line to leeward.

*Q.* Do you remember the Fox frigate coming to the Formidable in the evening?

*A.* I do.

*Q.* What diſtance do you think the Victory was from the Formidable at that time, and what was the poſition?

*A.* About three miles, and about two or three points on the lee-bow

Q. Under theſe circumſtances do you think, whatever ſignals might be made, or meſſages ſent, it was in our power to fetch up our ſtation in the line, unleſs the Admiral had waited for us?

*A.* I do not think it was; every effort was uſed, and every thing done that was poſſible to refit the ſhip. Two lieutenants, the fifth and ſixth, were ſick, and one of them the ſecond, was wounded in the action; the boatſwain was killed; the want of theſe four officers was a great diſtreſs to the refitting the ſhip. All the reſt of the men and officers were employed in repairing the damages till they were compleated.

Q. Did the ſhip ſteer kindly or wildly on account of having very little head ſail?

*A.* She yawed about a good deal.

Q. If ſhe had got into her ſtation in the line, was it poſſible to have managed her in a cloſe line?

*A.* I do not think it was.

Q. What time did the Fox come to the Formidable?

*A.* Nearly about ſeven o'clock.

Q. Was you in a ſituation to hear any part of the meſſage ſhe delivered?

*A.* I was on the poop, but I did not hear it diſtinctly.

Q. What part of it did you hear?

*A.* I underſtood the meſſage was for the Vice-Admiral of the Blue and his diviſion to bear down into the Admiral's wake.

Q. Did you hear the anſwer?

*A.* No.

Q. Do you remember the ſignal being made for ſeveral ſhips of my diviſion to bear down into the Admiral's wake, with ſeveral pendants on board the Formidable?

*A.* I do.

Q. Were they made before or after the Fox came?

*A.* Before, to the beſt of my recollection.

Q. Do you recollect when the fore-top-ſail was bent?

*A.* It was ſet about eight o'clock, *but I do not remember when it was brought to the yard.*

Q. Do you remember all hands being called to quarters

quarters and the drum beating to arms on the morning of the 28th, and what time?

*A.* About two o'clock.

*Q.* When did the Formidable get into the Admiral's wake?

*A.* I cannot anſwer to the time; it was before daylight.

*Q.* Was the Formidable's ſhip-company ſober, orderly, and well behaved?

*A.* They were.

*Q.* Was any liquor given to them before the work was over, at what time, and how much was given to them?

*A.* Nearly about ten o'clock each man had half a pint of wine given him.

*Q.* Did you obſerve any ſhips near us at different times in the afternoon of the 27th, and how many?

*A.* I do not remember more than two, I believe they were the Egmont and America.

CROSS-EXAMINATION.

*Admiral Digby.* Did you ſee the ſignal for the line of battle flying on board the Formidable any part of the afternoon?

*A.* I did not ſee it. I did not notice its being hoiſted at all. I was on the poop.

*Capt. Duncan.* Where were your quarters in the action?

*A.* On the upper gun deck.

*Q.* After you was out of action did you obſerve the Arethuſa?

*A.* I do not recollect ſeeing her at all.

*Sir Chal. Ogle.* Did you take notice of the Ocean near the Formidable at any time from three in the afternoon till dark?

*A.* No, I do not recollect ſeeing her, I was ſo taken up with repairs of the ſhip.

*Capt. Duncan.* In the diſpoſition of the officers where was you placed?

*A.* On the after-part of the ſhip.

*Capt. Duncan.* Did you perceive the ſignal for bearing down, the blue flag at the mizen-peak, any part of the afternoon?

*A.* The Admiral ordered us to repeat the ſignal that was made on board the Victory for that purpoſe.

*Capt. Duncan.* When you wore on the ſtarboard tack in the afternoon, do you remember that the Formidable at any time was on the larboard quarter of the Victory, to leeward of her wake?

*A.* I cannot charge my memory that ſhe was at any part of the time, or at leaſt not that I obſerved.

*Capt. Duncan.* Did you hear any orders given in conſequence of the meſſage which you heard the Fox deliver?

*A.* No, I did not. There might have been, but I did not hear any.

*Sir Chal. Ogle.* Did you perceive a practicability of the Vice-Admiral's ſhifting his flag on board of any other ſhip if it had been thought expedient?

*A.* It would have been attended with very great difficulty.

*Sir Chal. Ogle.* Do you know that any ſuch manœuvre was in agitation in the afternoon?

*A.* Not that I know of.

*Capt. Colpoys.* Explain to the Court the difficulties that would have attended the Vice-Admiral's ſhifting his flag.

*A.* The general deſtruction of the rigging.

The Vice-Admiral admits it was not intended.

*Capt. Duncan.* Can you tell the poſition of the Formidable with reſpect to the Victory at daybreak on the 28th?

*A.* She was nearly in the Victory's wake when I came upon deck, but I do not recollect the number of ſhips between, nor the diſtance, nor do I know what ſhips were neareſt to us.

*Capt. Robinſon.* Did you hear any thing of the foremaſt's being rotten?

*A.* No, Sir, not at that time.

*Preſident.* What time did the Victory come to the wind again in the afternoon, if at all? *A.* I

*A.* I do not remember; I did not obſerve her come again to the wind.

*Preſident.* Was it owing to the Formidable's incapacity of carrying more ſail, that the Victory increaſed her diſtance?

*A.* The Formidable could not make more ſail, and the Victory carried ſail from us, which cauſed the diſtance to increaſe.

*Q.* At what time did you obſerve this?

*A.* About ſeven o'clock, or later.

*Q.* At what time did you obſerve the Red diviſion to take their place in the rear?

*A.* I did not take any notice of the time, but it muſt have been earlier than the time fixed upon by the Victory.

*Q.* Do you underſtand that any anſwer was returned by the Formidable to the meſſage which was delivered by the Fox?

*A.* Yes, I have underſtood ſo, but I did not hear it.

*Q.* What was the impediment of your hearing it?

*A.* I was on the fore-part of the poop, and I apprehend the Vice-Admiral anſwered from the ſtern gallery.

*Adm. Digby.* Do you know whether the diſtinguiſhing lights were lighted or not on board the Formidable?

*A.* I do not know.

*Capt. Kempenfelt.* Did you obſerve the poſition of the Queen in reſpect to the Formidable, juſt before that motion took place?

*A.* I did not obſerve it.

*Q.* Did you obſerve the Queen at any time with reſpect to the Formidable that afternoon?

*A.* No, I did not.

*Sir Chal. Ogle.* Had you any watch upon deck that evening?

*A.* I had no regular watch. I was the day-officer, the ſecond lieutenant being wounded, I walked the quarter-deck for about an hour.

Q. Had you no time to inform yourſelf, whether or not they were lighted that night?

*A.* The top lanthorn was wounded; ſeeing that, I ordered a ſignal lanthorn to be ſent up immediately.

*Capt. Robinſon.* Did you never inquire whether the ſtern-lights were lighted or not?

*A.* I might, but I cannot recollect at this diſtance of time, it is ſo long ſince.

*Capt. Peyton.* Did you receive any orders for not keeping the lights burning that evening?

*A.* No.

*Capt. Colpoys.* How ſoon after the action of the 27th did you hear of the fore-maſt being rotten?

*A.* I cannot ſay how ſoon, but I believe it was before we got into port.

Q. Do you know any thing of the fore-top-gallant-yard, or maſt, being down that afternoon?

*A.* I don't recollect any circumſtance of the kind.

*Captain Kineer withdrew.*

JAMES DICKENSON, *ſecond Lieutenant of the* FORMIDABLE, *called in and ſworn.*

Q. Had you the morning watch on the 27th of July laſt?

*A.* Yes, I had.

Q. Inform the Court of the ſituation of the Formidable reſpecting the Victory, and of what happened from daylight in the morning, until the ſignal made for the ſhips of my diviſion to chaſe?

*A.* About a quarter paſt four, the Formidable was about a mile upon the ſtarboard, or lee-bow of the Victory, and nearly about that diſtance a-head; a quarter before five the Victory let her third reefs out of her top-ſails, and the Formidable did the ſame; about half paſt five the ſignal was made for about ſix ſhips of the blue diviſion to chaſe.

Q. Did the Formidable ſet her main-ſail at the ſame time when the Victory ſet hers?

*A.* Upon the Victory's ſetting her main-ſail, we ſet ours immediately, as we always paid the greateſt attention

tention to her motions, and thereby regulated our actions.

*Q.* Before you began to increaſe ſail, had you any ſtay-ſails ſet, and what were they?

*A.* We had main-top-maſt ſtay-ſail, fore-top-maſt ſtay-ſail, and mizen ſtay-ſail.

*Preſident.* Did the Victory in general always outſail the Formidable?

*A.* She always ſailed much better than the Formidable by the main-ſail; ſhe often ſpared the Formidable her main-ſail, and ſometimes a ſtay-ſail beſides.

*Sir H. Palliſer.* I beg leave to put one queſtion more to Captain Beazley.

*Captain Beazley was again called in.*

*Sir H. Palliſer.* What was the report you made to me on the afternoon of the 27th, reſpecting the Formidable's fore-maſt.

*A.* I made the report to the Vice-Admiral, that upon examining the wound in the fore-maſt, about ſix feet above the fore-caſtle deck, that it could not be ſafe to put any ſail thereon, and I thruſt my hand through the wound, and pulled out ſome rotten wood. Mr. Hills, the fourth lieutenant was with me at the time, and was witneſs to it.

JOHN HILLS, *late fourth Lieutenant of the* FORMIDABLE, *called in and ſworn.*

*Q.* Where was your ſtation for the purpoſe of refitting the rigging in the afternoon of the 27th, after the action?

*A.* Upon the fore-caſtle.

*Q.* Did you then take notice of the fore-maſt being wounded, and what obſervation did you make relative to it?

*A.* I ſaw ſeveral of the people looking at the fore-maſt that was wounded, which led me to examine it myſelf. I took away ſeveral pieces from the fore-maſt that were very rotten, and told Captain Beazley of it.

*Q.* Do you remember after the Formidable came

out of action, that ſhe was wore immediately in the rear of the enemy's line?

*A.* I do.

*Q.* Was any order or diſpoſitions made at that time in expectation of renewing the engagement?

*A.* The drum beat to arms, and I was ordered to my quarters.

*Q.* Whilſt ſhe was lying on the larboard tack, did you obſerve any of the French fleet to wear and ſtand towards her?

*A.* I ſaw them wear, and ſaw ſeveral ſhips point towards the Formidable; they looked up to windward of her.

*Q.* Did you underſtand that was the reaſon why the Formidable was ordered to wear again to ſtand towards the Victory and the fleet?

*A.* I did.

*Q.* Did you obſerve the motions of thoſe French ſhips that had been pointed towards us after we wore, and how they ſteered?

*A.* I did not obſerve them afterwards, till they were forming in the line.

*Q.* Did the Victory and Formidable afterwards meet?

*A.* They did.

*Q.* Was any ſignal for the line ſeen on board the Victory from the Formidable after they met?

*A.* I do not believe there was, for we were end-on at that time.

*Q.* Did you ſee the Arethuſa frigate before we came the length of the Victory?

*A.* I do not remember to have obſerved her.

*Q.* Whilſt the Formidable was ſtanding towards the Victory, were there any ſhips between them in a line a-head of the Victory that you noticed?

*A.* There were none that I ſaw.

*Q.* Did you ſee the ſignal for wearing, when the Victory and Formidable paſſed each other?

*A.* I cannot ſay exactly that I know; but I think the Formidable wore very ſoon after.

*Q.* How did the Victory ſteer after ſhe wore and paſſed the Formidable's wake. *A.* She

*A.* She appeared to be going two or three points from the wind.

*Q.* Did ſhe appear to you to keep her wind a little while before ſhe went large in that way, or how?

*A.* She was well ranged forward on the lee-bow of the Formidable, before ſhe led away ſo large.

*Q.* What was the ſituation of the Formidable in conſequence of her thus edging away?

*A.* The Formidable was upon her weather-quarter about two or three points.

*Q.* What diſtance was the Formidable from the Victory at half an hour after ſhe had paſſed under the Formidable's ſtern?

*A.* From half a mile to a mile, I ſhould ſuppoſe.

*Q.* Was ſhe then within the proper diſtance of her ſtation in the line?

*A.* Yes.

*Q.* Can you remember any particular circumſtances occurring to you, that the ſignal for the line was flying on board the Formidable that afternoon?

*A.* Yes, I do.

*Q.* Name them.

*A.* I cannot ſay that I obſerved them until Lieutenant Winckworth aſked me, what thoſe ſignals were; I replied to him, that if he would ſend down for my book of ſignals, I would certainly inform him; the book was ſent for and brought to me, I pointed out to him, by that book, that it was the ſignal for the line of battle a-head.

*Q.* Did not the Victory always outſail the Formidable under the ſame courſe of ſail?

*A.* Yes, very much.

*Q.* Did you obſerve what courſe the Formidable ſteered that afternoon with reſpect to the Victory?

*A.* I looked at the Victory very frequently, and ſaw her about a point under the Formidable's lee-bow.

*Q.* Did the Victory increaſe her diſtance from the Formidable during the afternoon?

*A.* She did, very conſiderably.

*Q.* What

Q. What was the diſtance increaſed, between the Victory and the Formidable, at the time the Fox frigate came to the Formidable?

*A.* Three or four miles, I dare ſay.

Q. What poſition was the Formidable in from the Victory at that time?

*A.* A point or two to windward of her, or more I ſhould ſuppoſe.

Q. Was it ſafe to ſet ſail upon the fore-maſt ſooner than it was done?

*A.* No, by no means.

Q. Was every effort, and means poſſible, uſed to refit the Formidable with the utmoſt diſpatch?

*A.* I do think it was; as it was the Admiral's expreſs orders, and every body was ready and expert in obeying thoſe orders.

Q. Do you remember the Fox coming to the Formidable, and at what time?

*A.* I remember it perfectly well, and I think it was near, or about ſun-ſet.

Q. Do you remember the ſignal being repeated on board the Formidable for ſeveral ſhips of the Blue diviſion to bear down?

*A.* I remember the ſignals being flying on board the Formidable.

Q. Was that before or after the Fox ſpoke to the Formidable?

*A.* It was before.

Q. At what time was the Formidable's fore-top-ſail bent and ſet?

*A.* About eight o'clock.

Q. Were the hands on board the Formidable called to quarters, and did the drum beat to arms before daylight on the morning of the 28th, and at what time?

*A.* The drum beat to arms before daylight.

Q. Did the Formidable get into the Admiral's wake before daylight that morning, and at what time?

Q. She was in the Victory's wake at daylight; but what time ſhe got there I know not.

Q. Did

Q. Did you obſerve any ſhips on the afternoon of the 27th near the Formidable, and how many?

*A.* I do not remember remarking any ſhips in particular being near the Formidable.

*Sir Hugh Palliſer.* I have no more queſtions to aſk this witneſs.

*The Court adjourned to next morning ten o'clock.*

SEVENTEENTH DAY. FRIDAY, APRIL 30.

At half paſt nine the Court reſumed their proceedings.

*Lieut. Hills called into Court again.*

CROSS-EXAMINATION.

Q. Where was you quartered on the morning of the 27th of July?

*A.* On the lower deck.

Q. Where was you ſtationed in ſeeing the repairs done?

*A.* On the fore-caſtle.

Q. Was you there moſt of the afternoon?

*A.* The greateſt part thereof I was.

Q. What ſail had you ſet the moſt of the afternoon?

*A.* The fore-ſail very much tore, as alſo main-ſail, main-top-ſail, and mizen-top-ſail, fore-top-ſail ſhot away.

*Capt. Duncan.* From what place did you ſee the ſignal for the line flying?

*A.* From the fore-caſtle.

Q. What, from the fore-caſtle you ſaw the ſignal for the line flying?

*A.* Yes, it was before the main-ſail was up.

Q. How long was you on the ſtarboard tack before your main-ſail was ſet?

*A.* A quarter or near half an hour I ſhould ſuppoſe.

Q. Do you recollect the ſignal for the line being made; was it with a gun, or without one?

*A.* I do not recollect it, I did not ſee it till it was pointed out to me by Lieutenant Winckworth.

*Capt. Bayne.* Did you ſee the Ocean near you that afternoon?

*A.* I

*A.* I did not ſee the Ocean, nor particularize any other ſhip being near the Formidable that afternoon.

*Q.* When ſignals were made for particular ſhips to bear down into the Admiral's wake, did you ſee any ſhips bear down in conſequence of that?

*A.* I did not.

*Capt. Robinſon.* Was the ſignal for the line hauled down when you repeated the ſignal for bearing down?

*A.* I think not.

*Q.* When was the ſignal for the line hauled down?

*A.* I cannot tell.

*Q.* Was it flying at the cloſe of the evening?

*A.* I was not then upon deck. I was ordered on the lower deck to complete the quarters in lieu of ſuch men as were killed and wounded.

*Ad. Digby.* Do you know whether there were orders or not from Sir Hugh Palliſer for the ſignal for the line to be hauled down?

*A.* I do not know.

*Ad. Digby.* Do you know whether the diſtinguiſhing lights were flying that night?

*A.* I cannot ſay, I was too particularly employed that night on the different decks to attend to them.

*Sir Chal. Ogle.* Had you no watch that night?

*A.* All hands were up all night.

*C. Kempenfelt.* Did you take notice of the Queen any time that evening?

*A.* I recollect ſeeing her form in the Victory's wake in the afternoon.

*Q.* Do you recollect her ſituation from the Formidable?

*A.* I think ſhe was rather before our beam, about a mile, between four and five o'clock.

*Q.* About what time was this?

*A.* Between four and five o'clock by the appearance of the ſun.

*Q.* Do you recollect what progreſs you had made between four and five, or between five and ſix, in repairing the rigging?

*A.* Upon my word I cannot ſay; I am ſure there was no time loſt.

*Q.* How

*Q.* How did the Victory bear at the time you mention the bearing of the Queen?

*A.* I did not attend to that and therefore I cannot tell.

*Preſident.* Do you mean that the ſignal for bearing down was flying when the pendants were thrown out?

*A.* Yes, Sir. I did not ſee it in the afternoon before that time; I ſaw the ſignal for the line in the afternoon.

*C. Kempenfelt.* Did you conſider the Formidable as a well-manned ſhip?

*A.* No, not particularly; ſhe was manned as other ſhips generally are.

*Preſident.* Give an account of what paſſed between the Formidable and the Fox, upon the latter coming down?

*A.* I was not in a ſituation to hear any meſſage. I was ſtationed on the fore-caſtle.

*C. Robinſon.* During the time that you were ſtationed on the fore-caſtle, were the men very alert, obedient and orderly?

*A.* Very alert; and I think every endeavour was uſed to get our rigging repaired.

*Preſident.* Before you left the fore-caſtle, did you take notice how the other two diviſions were ſituated with reſpect to the Formidable?

*A.* We were about two points on the Victory's weather-quarter. I did not obſerve the poſition of Sir Robert Harland's diviſion, I believe they were a-head of the Victory.

*C. Peyton.* Was the fore-top-ſail ſet at the time you made your obſervations on the Victory and Queen?

*A.* I left them in the operation of ſetting it; and when I came upon deck again, it was half an hour after it was ſet; it was ſet about eight o'clock.

*Withdrew.*

LIEUTENANT WALLER, *of the* FORMIDABLE.

*Q.* Do you remember the Fox coming to the Formidable on the evening of the 27th.

*A.* Yes.

*Q.* Do

*Q.* Do you remember a number of ſhips pendants being let fly on board the Formidable in the evening of that day?

*A.* I do, but I know not what ſhips they were for.

*Q.* Were the pendants flying before the Fox came to us?

*A.* They were.

*Q.* If you recollect any circumſtance relating to the diſtinguiſhing lights that evening, relate it to the Court.

*A.* I remember the lights were lighted as uſual, and the man in the top complained that he could not keep it in, becauſe the lanthorn was ſhot. He was deſired to remedy it as well as he could, and the lights were again ſent up.

*Q.* If you remember any particular circumſtance reſpecting our going into our ſtation in the night, relate it to the Court.

*A.* The Vice-Admiral ordered the main-ſail to be hoiſted up, to get into our ſtation. It was about two o'clock. The maſter was under apprehenſions that the Victory's lights might be the French Admiral's. I mentioned the opinion to the Vice-Admiral. We kept to the wind; and the Vice-Admiral took his glaſs, and ſatisfied himſelf that they were the Victory's, and then our helm was again put up, and we took our ſtation. The reaſon why theſe lights were judged to be the French Admiral's was, we had ſeen lights ſome time before juſt open on our ſtarboard-bow, which proved to be the Vice-Admiral's of the Red, about five or ſix miles diſtant.

*Q.* Did the Formidable ſhoot a-head of the Victory at any time before ſhe got into her wake?

*A.* I went off the deck ſoon after eleven o'clock, and left the Victory on our lee-bow. I came up again about one, and found her much in the ſame ſituation.

CROSS-EXAMINATION.

*C. Colpoys.* Do you recollect the time when the Fox joined the Formidable?

*A.* I

*Q.* I remember it was near ſun-ſet.

*A.* What paſſed between the Fox and Formidable?

*A.* I was upon the larboard gang-way, and I could not hear diſtinctly the meſſage or the anſwer.

*Q.* Do you recollect, at any time in the afternoon, ſeeing the ſignal for the line of battle flying on board the Formidable?

*Q.* I remember, when the pendants were flying, I ſaw a ſignal or ſignals flying at the mizen-peak, but what they were I cannot tell.

*C. Duncan.* Where was you ſtationed in refitting the ſhip that afternoon.

*A.* At the main rigging.

*Q.* Do you recollect at what time the main-ſail was ſet, when you were upon the ſtarboard tack, and what ſituation was the Formidable in at the time the Victory paſſed you.

*A.* I cannot ſtate the exact time; but as ſoon as the tacks and ſheets were ſpliced.

*Q.* In what ſituation was the Victory at that time?

*A.* To the beſt of my recollection we were nearly in the Victory's wake; ſhe had paſſed us about half an hour.

*C. Colpoys.* Do you recollect any particular reaſon being aſſigned why the fore-top-ſail was not ſet ſooner?

*A.* I was ſtationed at the main rigging, but I could plainly ſee that the rigging was in general very much ſhot; and the reaſon I heard aſſigned was, that the maſt was much wounded, and it was neceſſary to ſecure it before more ſail could be ſet.

*C. Duncan.* Was you upon deck in the morning of the 28th?

*A.* I was.

*Q.* Did you plainly ſee the Victory?

*A.* Yes.

*Q.* What ſituation was ſhe then in with regard to the Formidable?

*A.* We were in our ſtation, and of courſe the Victory was nearly a-head of us.

*Q.* Did you ſet your main-ſail again, after hauling it up in the morning? *A.* I

*A.* I do not recollect that we did, and being in our ſtation it was not neceſſary.

*Q.* Do you recollect if Captain Beazley was upon deck at the time you were in doubt about the Victory's lights?

*A.* I do not recollect that Captain Beazley was upon the deck juſt at that time, but he was ſo in general whilſt I was there.

*Q.* Did you at that time ſee the diſtinguiſhing light burning on the top of the Formidable?

*A.* I do not recollect that I did. The lights were in general ſo well attended to, I did not think it neceſſary. We were going down into our ſtation, and that engaged my attention.

*Q.* Where was you quartered in time of action?

*A.* On the lower gun deck.

*Preſident.* When you was upon deck, did you ever inquire about the ſtern lights?

*A.* I do not recollect that I ever did, I ſuppoſed they were burning as uſual.

*Q.* Do you recollect, as you was at the main-maſt, a gun being fired as a ſignal, at any time after coming out of action?

*A.* I do not recollect that I did.

*C. Colpoys.* After the Formidable got into her ſtation in the line, what ſail did ſhe keep?

*A.* I do not recollect that ſhe made any alteration; ſhe had her top-ſails and fore-ſail.

*C. Duncan.* Do you recollect if the mizen-top-ſail was handed in the evening, as is uſual in flag ſhips?

*A.* I remember in general we uſed to hand it, but I cannot ſpeak to that night.

*C. Duncan.* You ſay you ſaw a ſignal or ſignals at the mizen-peak, was the mizen ſet at that time?

*A.* I cannot charge my memory.

*Preſident.* Did you, any time that afternoon, ſee any general ſignals on board the Victory at ſun ſet on the 27th?

*A.* I did not attend to the ſignals on board the Victory, and do not remember that I did.

*Q.* Do you remember, after the Victory paſſed you

on

on the ſtarboard tack, how the Formidable was cunned that afternoon ?

*A.* We kept the Victory about a point, or a point and a half under the lee-bow.

*Q.* Did you go from the wind ?

*A.* Yes; I ſuppoſe about a point, or a point and a half from the wind,

*C. Kempenfelt.* Did you obſerve the Vice-Admiral of the Red when he was in the rear any time in the afternoon ?

*A.* I remember to have ſeen him forming there, but I cannot ſpeak to time.

*Q.* How was the Queen ſituated at that time, with reſpect to the Formidable ?

*A.* Rather before the Formidable's beam, about a mile, or a mile and a half diſtant.

*Q.* Did you conſider the Formidable as a well manned ſhip ?

*A.* We were tolerably well manned? nothing remarkable. *Withdrew*

ROBERT HAVEN, *Gunner of the* FORMIDABLE, *called in and ſworn.*

*Q.* Have you got your expenſe book for the month of July laſt? if you have, produce it.

*A.* I have. (The book was produced.)

*Q.* Does it appear that a ſignal gun was fired in the afternoon after the action ? if ſo, read the article.

*A.* 27th July, 1778, fired for ſignal of line of battle a-head, twelve pounder one, cartridge one, powder ſix pounds.

*Q.* Is that of your own hand writing?

*A.* It is.

*Q.* When was the inquiry firſt made if ſuch an entry was in your expenſe book ?

*A.* Laſt Saturday morning.

*Q.* Does it appear by your book that that was the laſt gun fired that day ?

*A.* Yes.

CROSS-EXAMINATON.

*Ad. Digby.* Do you remember that gun being fired?

*A.* My mate is here, and can ſpeak to that.

*Sir Chal. Ogle.* From your own knowledge, did you ſee the ſignal for the line of battle flying on board the Formidable that afternoon?

*A.* I did.

*Q.* What were the flags?

*A.* I think I ſaw a blue ſtriped flag, I aſked a midſhipman what it was for, who told me it was the ſignal for the line of battle.

*C. Peyton.* Were there more flags flying at the mizen-peak than one, and at what time?

*A.* Between two and three in the afternoon; I cannot charge my memory whether there was more than one; it was not a duty of mine.

*C. Dun.* Is this book all of your own writing?

*A.* Yes, except Captain Beazley's ſignature.

*Q.* When was it copied from your rough ſcroll?

*A.* In Auguſt laſt.

*Q.* Has it been conſtantly in your poſſeſſion ſince?

*A.* Conſtantly, except when the Admiral's clerk copied it for the Captain's uſe.

*Withdrew.*

WILLIAM ADAMS, *Gunner's mate on board the* FORMIDABLE, *called in and ſworn.*

*Q.* Do you remember a ſignal-gun being fired in the afternoon after the engagement; and if you remember any thing particular relating to the firing of that gun, give an account of it.

*A.* It was fired in the afternoon preſently after the engagement; I fired it myſelf.

*Q.* Do you remember whether the ſhot was drawn?

*A.* The ſhot was in it, round and double head, and pointed in the water.

*Q.* Was there any other ſignal gun fired that afternoon. *A.* No.

*Q.* What gun was it that you fired?

*A.* The ſixth gun on the larboard ſide.

*Q.* On

Q. On what occaſion was that gun fired?

*A.* I do not know, I only know it was a ſignal gun.

Q. How do you know that the gun had a round and double-headed ſhot?

*A.* The guns were all ſhotted before we came into action, and none of the larboard ſide were fired. I ſaw them ſhotted myſelf.

*Capt. Duncan.* Was it the weather or lee-ſide at that time?

*A.* It was the weather-ſide.

Q. Then the ſhip muſt have been on the larboard tack?

*A.* To the beſt of my knowledge the larboard tacks were on board.

*Withdrew.*

*Sir William Burnaby was again called.*

*Sir H. Palliſer.* After you delivered your meſſage to the Queen, did you take notice of the Vengeance?

*A.* I did.

Q. Was ſhe left at a diſtance a-ſtern, and did ſhe appear to you to be in a diſabled ſtate?

*A.* Yes, ſhe appeared to me to be two or three miles a-ſtern, nearly in the Victory's wake, and then ſeemed to me to be in a very diſabled ſtate.

Q. Do you remember your being ſent for on board the Victory, and afterwards going with a meſſage to the Formidable, on the morning of the 28th?

*A.* I remember my ſignal was made to come on board the Admiral's ſhip ſoon after daylight, and I was then ordered by Admiral Keppel to go on board the Formidable, with his compliments to Sir Hugh Palliſer, and deſired to know how he was, and begged a return of the ſtate and condition of his ſhip?

Q. Do you remember returning to Admiral Keppel with a letter from me, and what occurred at the time of your delivering it?

*A.* I returned in about a quarter of an hour, with a letter from Sir Hugh Palliſer, which I preſented to Admiral Keppel, then I think in his cot. He read it,

and handed it to Admiral Campbell, and ſaid, "Here, Campbell, read this letter. Sir Hugh ſeems to have ſuffered more than either of us." I ſoon after withdrew, and returned on board the Milford.

*Captain Duncan.* Upon what tack was the fleet at that time; under ſail, or lying to?

*A.* I think they were lying to on the larboard tack, with their heads to the northward.

*Q.* Where was the Formidable ſituated with reſpect to the Victory at that time?

*A.* I do not this moment recollect her poſition.

*Q.* What time did the Vengeance appear to you diſabled?

*A.* Between five and ſix in the afternoon.

*Q.* Do you recollect ſeeing any three-decked ſhips a-ſtern of the Victory at that time? how many, and their names?

*A.* When I delivered the meſſage to Sir Robert Harland, the Queen was a-ſtern of the Victory, and nearly in her wake, with ſome others of his diviſion, but I was obliged to go a-ſtern of all the ſhips except the Vengeance, before I could get into my ſtation.

*Q.* Did you take notice of the Vice-Admiral of the Blue at that time, what ſhips he had with him, and how far diſtant to windward?

*A.* Soon after I paſſed Sir Robert Harland, I think I ſaw the Formidable a good way a-ſtern, and well to windward.

*Captain Kempenfelt.* What diſtance was the Queen a-ſtern of the Victory when you delivered the meſſage?

*A.* I do not recollect. *Withdrew.*

LIEUTENANT BEARD, *late of the* AMERICA, *called in and ſworn.*

*Q.* Do you remember taking notice of a frigate coming to the Formidable, and about what time?

*A.* Yes, I remember a frigate coming cloſe under the Formidable's ſtern about the cloſe of the evening, but I cannot ſay the exact time.

*Q.* Do you recollect taking notice of the ſignal for the

the line flying on board the Formidable at any time that afternoon?

*A.* I cannot ſpeak with any certainty to ſignals. It was five o'clock when we came into her wake; I ſaw many ſignals flying on board the Formidable in the evening. I am certain of many pendants for particular ſhips to bear down into the Admiral's wake.

*Adm. Digby.* Was that frigate that you ſaw come under the Formidable's ſtern, the Fox?

*A.* I was told at that time it was the Fox, and from circumſtances afterwards it could be no other.

*Q.* Was it before ſun-ſet?

*A.* It was.

*Q.* How far was you diſtant from the Formidable?

*A.* About half a mile a-ſtern almoſt, in her wake.

*Q.* How did the Victory wear at that time?

*A.* About three miles under our bow.

*Q.* Were the pendants flying before or after the Fox came to the Formidable?

*A.* Much about the ſame time; I cannot ſay whether it was before or after.

*Q.* Was the ſignal for the line on board the Formidable taken notice of on board the America?

*A.* Yes, I heard ſeveral ſay they ſaw it; the maſter I think told me he ſaw it.

*Captain Kempenfelt.* Where was the Ocean that afternoon?

*A.* She was, Sir, between us and the Formidable, on her lee-quarter.

*Q.* Did you ſee her bear away to take her ſtation in the line, and how much did ſhe bear away from the wind?

*A.* I think ſhe went almoſt before the wind.

*Q.* How far did ſhe run down before ſhe got into her ſtation?

*A.* I do not think it could exceed a mile, or a little more.

*Q.* Was you in your ſtation in the line before dark?

*A.* Juſt as we got into our ſtation it was then dark.

*Q.* Was the Ocean then in her ſtation?

*A.* She got in before us.

*Q.* When you got into your ſtation, was you further a-ſtern than you ſhould have been in the line?

*A.* I think not, we were nearly in our proper ſtation.

*Q.* What was your ſtation?

*A.* Next a-ſtern of the Ocean.

*Q.* Did you eſteem yourſelf further from the ſhip when you got into your ſtation, than you ſhould have been reſpecting other ſhips?

*A.* I can only ſpeak with reſpect to the Ocean; it was then near dark.

*Q.* Can you ſpeak with reſpect to the Victory?

*A.* No, I cannot; but I ſaw her lights.

*Q.* When you bore away, did you leave any ſhips with the Formidable?

*A.* I cannot ſay that there were any ſhips near to the Formidable. There were two or three left to windward diſabled; the Ramillies was one.

*Q.* Did you ſee the Victory's lights all night?

*A.* I ſaw them at eight o'clock, but was not on deck again till four o'clock in the morning.

*Q.* Did you ſee the Formidable in the morning of the 28th?

*A.* Yes, I ſaw all the three flags; they appeared to be in a line.

*Q.* Did you ſee the Vengeance in the afternoon?

*A.* While we were ſtanding on the ſtarboard tack, a ſhip was pointed out to me a-ſtern, which I was told was the Vengeance. We were in pain for her, ſhe was nearer to the French fleet than any of us.

*Withdrew.*

RICHARD SEARLE, *Maſter of the* AMERICA, *called in and ſworn.*

*Q.* Do you remember ſeeing a frigate coming under the Formidable's ſtern on the evening of the 27th of July, and what time was it?

*A.* I ſaw a frigate come under her ſtern towards the cloſe of the evening, a little before ſun-ſet.

*Q.* Do you remember ſeeing the ſignal for the line of

of battle on board the Victory and Formidable that afternoon?

*A.* I remember ſeeing a blue flag at the mizen-peak of the Victory and Formidable before the blue flag was hoiſted, but cannot ſay what ſignal it was.

*Q.* Do you remember ſeeing the Formidable's lights that night?

*A.* I ſaw them frequently.

EXAMINED *by the* COURT.

*Q.* Deſcribe the lights you ſaw.

*A.* I ſaw the ſtern light frequently. I cannot be poſitive as to the top light.

*Q.* At what time in the evening did you firſt ſee it?

*A.* Juſt at dark, and from that till eleven o'clock.

*Q.* Was you in the line when you ſaw the lights?

*A.* Yes.

*Q.* Did the Formidable's lights appear to be in the line at that time?

*A.* No; upon the weather-bow.

*Q.* Was the flag you ſaw upon the mizen-peak of the Formidable hauled down, or continued flying after the blue flag was hoiſted?

*A.* I cannot ſay whether it was continued flying after the blue flag was hoiſted, I rather think it was hauled down; but I cannot ſpeak poſitively at this diſtance of time.

*Q.* Was the ſignal you ſaw conſidered on board the America as the ſignal of the line?

*A.* I believe it was by every body.

*Q.* Do you remember the time in the evening when you bore down into the Victory's wake, and what hour was it?

*A.* It was a little before ſun-ſet. We attempted to bear down twice, but the ſhips were ſo thick to leeward, that we were obliged to bring to. It was near ſun-ſet when we got into our ſtation.

*Q.* Were the ſhips ſo thick to leeward that you could not get into your ſtation?

*A.* Not without our waiting to give them an opportunity to ſhoot on.

*Q.* Are we to underſtand by that, you muſt have brought the wind upon the larboard quarter to get on your ſtation?

*A.* No; I don't imagine that was neceſſary, the wind was always upon our ſtarboard quarter; there was ſome ſhip in the way prevented our getting into our ſtation.

*Q.* How large did you ſteer when you bore away to get into your ſtation, and what diſtance do you think you run?

*A.* I believe we brought the wind about four points on the quarter; and ſuppoſe we ran down at different times about a mile.

*Q.* Do you recollect what diviſion thoſe ſhips were of which cauſed the impediment to your going down?

*A.* I don't recollect what diviſion they were of; I only took notice of the Ocean, which was the ſhip we were to follow.

*Q.* The firſt time you attempted to bear down, where was the Vice-Admiral of the Red diviſion?

*A.* A-head of the Admiral I believe.

*Q.* How far a-ſtern of the Formidable was you when you bore away to get into your ſtation?

*A.* Not far; about half or three-fourths of a mile.

*Q.* Did you ſee the ſignal of the line flying on board the Victory in the evening at the mizen-peak?

*A.* I ſaw a flag flying, but cannot ſay what flag it was.

*Q.* How early was it in the evening that you underſtood that the ſignal of the line was flying on board the Formidable?

*A.* I believe it was about ſix o'clock in the evening.

*Q.* Did you take notice of the Formidable before dark? *A.* Yes, I did.

*Q.* What was her ſituation in regard to the America?

*A.* We were on the Formidable's lee-quarter.

*Q.* Was you upon deck at break of day on the morning of the 28th?

*A.* Yes,

*A.* Yes, and an hour before daylight, and continued there all the morning.

*Q.* Did you ſee the Formidable at any time after you came upon deck in the morning?

*A.* Not early in the morning; I don't recollect noticing her.

*Q.* How ſoon do you recollect to have taken notice of her?

*A.* I cannot ſay, 'tis ſo long ſince; it might be ſeven or eight o'clock.

*Q.* When you got into your ſtation in the line, was you the ſternmoſt ſhip?

*A.* No; there might have been two or three ſhips a-ſtern us.

*Q.* Were they at any great diſtance from you?

*A.* No; not any great diſtance.

*Q.* What ſhip, reckoning from the van ſhip of the enemy, was the America oppoſed to in the line, when ſhe firſt got in her ſtation?

*A.* I believe the fourth or fifth ſhip was upon our beam, or thereabouts, about a mile, or a mile and a quarter to leeward.

*Withdrew.*

LIEUTENANT JOHN INGLEFIELD, *late of the* ROBUSTE, *called in and ſworn.*

*Q.* In what ſituation was the Robuſte, reſpecting the Vice-Admiral of the Red, at daybreak on the 28th of July?

*A.* She was at that time about two or three cables lengths upon the Vice-Admiral of the Red's weather-quarter.

*Q.* As the day came on, what ſhips were neareſt to you, and deſcribe their ſituation from you?

*A.* I ſaw moſt of the ſhips of the Red diviſion near the Robuſte, and the Berwick was very near upon the lee-quarter.

*Q.* When you firſt ſaw the Formidable after that time, in what ſituation was ſhe?

*A.* She was three or four miles diſtant from the Robuſte

Robuſte when I firſt ſaw her, which was as ſoon as the increaſe of daylight would permit to ſee the diſtance of three and four miles.

*Q.* What ſituation was the Formidable in when you did firſt ſee her?

*A.* She was in the rear of the fleet. I only ſaw her flag, as there were many ſhips between her and the Robuſte.

*Q.* Did ſhe appear to be a-ſtern of the Admiral?

*A.* She did.

*Q.* Did the Robuſte tack or wear, in order to join the Formidable?

*A.* When it was perceived that the Robuſte was at ſo great a diſtance from the Formidable, the main-ſail was hauled up, and the mizen-top-ſail backed, to give room to the Robuſte to be wore, a ſhip on the lee-quarter being a-ſtern, as ſoon as ſhe was a-ſtern of that ſhip ſhe was wore.

EXAMINED *by the* COURT.

*Q.* Do you know what ſhip that was?

*A.* The Berwick.

*Q.* Did you take notice of the Stirling Caſtle?

*A.* I did not; there were other ſhips about the Berwick, that I did not take particular notice of her.

*Q.* After you wore, did you run down and join the Formidable? *A.* Yes.

*Q.* How far did you run?

*A.* I ſhould ſuppoſe three or four miles.

*Q.* Were your colours flying at day-light?

*A.* Yes, both enſign and jack.

*Q.* Had you any thing at your fore-top-gallant-maſt-head, that might appear like a flag?

*A.* No. The fore-top-gallant being ſhot away in the action.

*Withdrew.*

JOHN BRAND, *who attended the Lights on board the* FORMIDABLE, *called in and ſworn.*

*Q.* Do you recollect being employed to light the top lanthorns the night after the action? *A.* I do.

*Q.* Relate

Q. Relate any difficulty that you found in lighting it.

*A.* I was ſent up with a ſignal lanthorn becauſe the top lanthorn was wounded. After the light was ſent up, we found means to make it burn in the top lanthorn, by patching it with canvaſs. I was up in the top two hours, looking out, and then I went to ſleep and ſlept in the top till half paſt eleven, when it was ſtill burning; I ſlept again till dawn of day; when I awoke the light was out.

THOMAS CONSTABLE, *one of the Top-Men, called in and ſworn.*

Q. Do you remember whether there was a light in the poop lanthorn the night after the engagement?

*A.* Yes.

Q. How do you know there was a light there?

*A.* I had the charge of it.

Q. What did you do?

*A.* I took care to ſnuff it.

Q. How long had you the care of it?

*A.* Two hours.

Q. Did you leave it burning?

*A.* Yes.

*Court.* What were the hours you had charge of it?

*A.* Between twelve and two.

Q. Was it burning when you took charge of it?

*A.* Yes.

Q. Did the light ever go out whilſt you had the charge of it?

*A.* No.

MR. REID, *late Maſter of the* QUEEN.

Q. Is the log-book that you delivered into this Court the identical log-book that you delivered into the former Court-Martial?

*A.* It is not. I gave up the former to my agent to paſs my accounts when I removed from the Queen, and here is his letter acknowledging the receipt. (produced.)

Q. What log-book is this?

*A.* It is the log-book which I found in the ſhip when I came on board of her. Q. Was

*Q.* Was you not Maſter of the Queen on the 27th of July?

*A.* I was, and the minutes of that day's proceedings are of my writing.

*Q.* Is this then the proper ſhip's log-book, or was the other?

*A.* This is the proper ſhip's log-book, the other was my own.

*Q.* Is this an exact copy of the other?

*A.* There is ſome difference in the marking of the afternoon of the 27th, which was not in the former.

*Q.* What are thoſe differences?

*A.* In my own book there were no knots marked from twelve to four, nor of the variety of courſes that we ſteered in forming the line; hauling down the ſignal for battle was in my own, but is not in this; thoſe are all the differences.

*Q.* In the other book was not the omiſſion from half after one to half after four?

*A.* I cannot recollect.

*Q.* When were the rates of going that appear now in this book entered into it?

*A.* That afternoon, on the 28th.

*Q.* How came they to be omitted in the log-book that was produced in the former Court?

*A.* I did not think it was of any conſequence; I did did not think that I could truſt to the minutes of the courſes, they were ſo various.

*Q.* Was you not aſked at the former trial, whether there was nothing marked to thoſe hours in the original log, and what was your anſwer?

*A.* To the beſt of my remembrance I was aſked the queſtion, and I anſwered, that I did not think there was any mark to thoſe leaves.

*Q.* This log uniformly ſays—two knots—two knots, &c.—I aſk you whether you had not all your ſails, top-gallants, and your courſes ſet, when you was upon the larboard tack?

*A.* When we doubled upon the enemy, we did ſet top-gallant-ſails, and every thing.

Sir

Sir Hugh Palliſer read a paſſage from the log-book: "About half paſt noon, being about a mile paſt the "the enemy, tacked, and doubled on the enemy, car- "rying a preſſing ſail; Sir Hugh Palliſer and his di- "viſion being cloſely engaged with the enemy, ſeveral "of which appears diſabled."

*Q.* Was that remark of your entry, and of your making?

*A.* Entirely of my own.

*Q.* In conſequence of that obſervation did you take notice of the Formidable being ſo engaged?

*A* When ſhe came out of the ſmoke I did obſerve ſhe was one of the ſhips that was very much ſhattered.

*Q.* Was her condition then very apparent?

*A.* I think it was.

*Q.* Did you take notice of the Formidable immediately after ſhe got clear of the enemy, and that ſhe wore and laid her head towards them again?

*A.* My attention was ſo much given to my own ſhip, that I did not ſee her till we were afterwards on the ſtarboard tack.

*Q.* Was the log-book uſually communicated to Sir Robert Harland.

*A.* It always was whenever he choſe to ſee it.

*Q.* Was the ſame remark in your own log?

*A.* Exactly.

*Q.* Did the Admiral approve of your log-book?

*A.* He never ſignified any diſapprobation.

*Q.* Do you remember ever having any particular converſation with him on any part of this day's work?

*A.* Between nine and ten o'clock I ſhewed a rough ſketch of the remarks of that day's proceedings, which he approved of, all but time, which he ſaid I had not been very correct in.

*Q.* Do you remember the Admiral, or the Captain with yourſelf make any obſervations about me and my diviſion?

*A.* Neither the Admiral nor Captain deſired me to make any obſervations about it; the remarks were all my own.

*Q.* Did

Q. Did you not go large when you went down to form a-ſtern of the Admiral, and what ſail were you under.

*A.* We were under our top-ſail and fore-ſail; we did not go large to ſignify when we wore, we had wore juſt a-ſtern of the Admiral; we did not go more than a point at moſt from the wind.

CROSS-EXAMINATION.

Q. When the Formidable came out of action, how was ſhe ſituated with reſpect to the Queen?

*A.* The Queen paſſed her very ſoon after to windward, about a mile.

Q. How was the Victory at that time ſituated with regard to the Queen.

*A.* She appeared almoſt a-ſtern of us; I cannot recollect the diſtance.

*Ad. Digby.* In going from the rear to the van, what diſtance did you paſs from the Victory and the Formidable?

*A.* We were above half a mile to windward of the Victory; the Formidable was to the windward of us, but I do not recollect the diſtance

Q. Was you upon deck at daybreak in the morning of the 28th?

*A.* Not till the ſignal was made to form the line.

Q. What was the ſituation of the Queen at that time in reſpect to the Victory and the Formidable?

*A.* I cannot recollect the diſtance of the Formidable, I did not ſee her, we were about one mile and a half a-head of the Victory.

Q. Did you take notice of the Stirling Caſtle that morning, and how was ſhe ſituated in reſpect to the Queen?

*A.* I did not ſee her.

Q. What time did the Red diviſion get into their ſtation a-head of the Admiral in the evening of the 27th.

*A.* It was between ſeven and eight; we had four miles to run.

Q. Juſt before you moved from the rear to the van, how

how was the Formidable ſituated from the Queen, and at what diſtance.

*A.* She appeared about three or four points broad on the weather bow; I cannot recollect the diſtance.

*Q.* How far was you from the Victory at that time?

*A.* About two miles according to the line of battle.

*Q.* What general ſignals were made from the time that you was on the ſtarboard tack on board the Queen?

*A.* As to the time I cannot be exact. The firſt ſignal after wearing was to form the line of battle a-head at a cable's length aſunder. Soon after that a frigate, the Proſerpine I think, hailed us to form a cloſe line a-ſtern of the Victory, and call down ſhips into the wake, which ſignal was continued till a ſecond frigate, the Milford, hailed us; then we had Admiral Keppel's orders to lead the flat a-head. At that time the ſignal was continued out for the line of battle.

*Q.* Can you recollect the time when you received orders to form a-head?

*A.* As near as I can recollect, about five o'clock.

*Q.* Did you take notice of any ſignals on board the Formidable at that time?

*A.* I did not.

*Q.* Did you ever look with a glaſs.

*A.* No, I do not recollect that I did.

*Q.* At the time you ſaw the Formidable come out of action, was the Queen lying to, or under way?

*A.* I have already ſaid ſhe had her top-gallant-ſails ſet, doubling upon the rear of the enemy.

Sir Hugh Palliſer read from the log this paſſage, "At eight o'clock, in making ſail through our fleet "to get a-head, obſerved a great part of the ſhips diſ-"abled in their maſts and rigging," and aſked

*Q.* How long was it after that time that the Queen got into her ſtation?

*A.* I cannot confine myſelf to time; I think the Queen was in her ſtation about eight o'clock, or very ſoon after.

*Q.* When you edged away, how ſoon did you haul your wind? *A.* As

*A.* As ſoon as we got into our ſtation we ſhortened ſail and hauled our wind.

*At half paſt three the Court adjourned.*

EIGHTEENTH DAY. SATURDAY, MAY 1.

ROBERT HOGGART, *a Midſhipman of the* FORMIDABLE *called in and ſworn.*

*Sir H. Palliſer.* Give an account what ſignals were repeated on board the Formidable, after the Victory paſſed to leeward of her, on the afternoon of the 27th, beginning with the firſt of them?

*A.* Immediately after the Victory paſſed to leeward of the Formidable, the ſignal for the line was repeated, it was kept up ſome time, and then hauled down; the blue flag was then hoiſted alone at the mizen-peak; when that was hauled down, the ſignal for the line was hoiſted again; afterwards the blue flag was hoiſted underneath the ſignal for the line; and different ſhips pendants thrown out before the Fox hailed the Formidable.

*Q.* Were the ſignals for the line and the blue flag under it kept up till night?

*A.* Yes.

EXAMINED *by the* COURT.

*Q.* Did you take any minutes of thoſe ſignals yourſelf that day?

*A.* I kept minutes of ſignals before the action, but none after.

*Preſident.* Mention the time thoſe ſignals were made and hauled down?

*A.* I cannot ſay I can charge my memory with the time.

*Q.* Was the ſignal for the line immediately hoiſted when the blue flag was hauled down?

*A.* Yes it was.

*Sir Chal. Ogle.* Was there any time in the afternoon when thoſe ſignals were not flying?

*A.* No, I can't ſay there was.

*Capt. Duncan.* Did you ſee all theſe ſignals you have mentioned flying yourſelf?

*A.* Yes,

*A.* Yes, I did.

*Q.* Were they made with guns or without?

*A.* The ſignal for the line was made with a gun.

*Q.* Was the ſignal for bearing down made with a gun?

*A.* I don't recollect.

*Q.* Was you appointed to obſerve ſignals made on board the Victory, and to repeat them?

*A.* I was.

*Q.* Did you ſee the Arethuſa while the Formidable was upon the larboard tack immediately after ſhe came out of action?

*A.* I cannot ſay I did.

*Q.* What is the ſignal for the line of battle?

*A.* Union at the mizen-peak, a blue flag with a red croſs underneath it.

*Capt. Colpoys.* Did you repeat the ſignals, having ſeen them fly on board the Victory? *A.* Yes.

*Capt. Duncan.* Did you do it of yourſelf, or by any particular perſon's orders, and by whom?

*A.* By order of the Vice-Admiral.

*Capt. Colpoys.* Did you ſee the Arethuſa any time in the afternoon, and about what time?

*A.* I did ſee her, but I can't recollect the time; it was towards the evening.

*Preſident.* It was from the Victory then that you took the ſignals? *A.* Yes.

*Q.* What ſignals had ſhe flying at that time?

*A.* The ſignal for the line to the beſt of my knowledge; I can't recollect whether ſhe had any other.

*Capt. Colpoys.* Was you ſtationed on the poop that afternoon?

*A.* I was going backwards and forwards between the poop and quarter-deck; I was not ſtationed in any particular place.

*Ad. Digby.* Where was you at the time the Fox hailed the Formidable?

*A.* Upon the quarter-deck.

*Capt. Colpoys.* Did you hear the meſſage that was delivered by the Fox? *A.* No.

*Q.* Did you hear the anſwer that was returned?

*A.* No.

*Q.* Do you know what time the Fox came down to the Formidable?

*A.* I cannot ſpeak as to time.

*Capt. Robinſon.* Was it at ſun-ſet, or after ſun-ſet?

*A.* About ſun-ſet.

*Adm. Digby.* Had you any watch that night, or was you upon deck?

*A.* I was upon deck all night.

*Q.* Did you ſee the Victory's lights that night?

*A.* I do not recollect whether I did or not.

*Q.* Were the Formidable's lights burning that night?

*A.* I can't charge my memory about the lights; to the beſt of my recollection the poop light was burning.

*Preſident.* How long was it after you firſt ſaw the ſignal of the line on board the Victory that you made it on board the Formidable?

*A.* To the beſt of my remembrance it was repeated directly.

*Capt. Duncan.* How came you to leave off taking notes of the ſignals immediately after the action?

*A.* I can't ſay for any particular reaſon.

*Q.* Are you certain you took no notes after the action?

*A.* Yes; we took them after the action, but not that day.

*Preſident.* When the Fox hailed you, how did the Victory bear from the Formidable?

*A.* The Victory was about two points upon our lee-bow; I can't ſpeak to the diſtance.

*Q.* What ſhips were a-ſtern of you at that time?

*A.* There were ſome, but I can't ſay how many.

*Q.* How near was the ſternmoſt ſhip from you?

*A.* I can't ſay to the diſtance; it was not great.

*Q.* Was there a three-deck ſhip a-ſtern of you?

*A.* I don't recollect.

*Withdrew.*

DANIEL

DANIEL GUERRIN, *a Midſhipman of the* FORMIDABLE, *called in and ſworn.*

*Sir H. Palliſer.* Do you remember the Fox coming under the Formidable's ſtern, and about what time?

*A.* I remember the Fox coming under the Formidable's ſtern near ſun-ſet.

*Q.* What meſſage did you hear delivered from the Fox; what words do you remember to have heard?

*A.* I heard Captain Windſor ſay, that Admiral Keppel deſired that Sir Hugh Palliſer's diviſion would bear down into his wake.

*Q.* Did you hear any other words?

*A.* No, I could not hear any other words for the people's cheering on board the Fox.

*Q.* What anſwer did you hear me make to the Fox?

*A.* I heard you anſwer, "Very well; very well; "that you had made the ſignal for that purpoſe."

*Q.* Where was you when this paſſed?

*A.* Cloſe to Sir Hugh Palliſer in the upper-ſtern gallery.

*Q.* You are ſure it was in the upper-ſtern gallery?

*A.* Yes, I am ſure.

*Q.* Do you remember handing up a blue flag from the quarter-deck to be hoiſted under the ſignal for the line?

*A.* I did not hand it up, it was already on the poop; but I ordered Mr. Hoggart to hoiſt it under the ſignal for the line, and he did it immediately in my preſence.

*Q.* Was there a number of ſhips pendants let fly about the time you are ſpeaking of, or was it before or after the Fox ſpoke to us?

*A.* I remember ſeveral pendants being flying before the Fox ſpoke to us.

EXAMINED *by the* COURT.

*Sir Chal. Ogle.* Was the blue flag flying at the ſame time at the mizen-peak with the pendants?

*A.* The blue flag was flying at the mizen-peak with the pendants before the Fox joined us.

*Q.* Where was you ſtationed at that time?

*A.* On the quarter-deck.

*Q.* Had you any particular employment?

*A.* I was ordered by the Vice-Admiral to do my utmoſt endeavours in getting the rigging repaired after the action.

*Q.* You was not ſtationed to obſerve ſignals, was you?

*A.* Yes, I was.

*Q.* Did you take any note of the ſignals the day of the action?

*A.* I did in the morning before the action, but none after the action began.

*Capt. Colpoys.* Was the meſſage delivered from the Fox by one perſon alone, and was it repeated by one perſon alone?

*A.* It was delivered by one perſon alone; I did not hear it repeated by a ſecond perſon.

*Withdrew.*

WILLIAM RHODES, *Captain's Clerk of the* FORMIDABLE, *called in and ſworn.*

*Sir H. Palliſer.* Do you remember ſeeing the Fox come under the Formidable's ſtern, the evening of the 27th of July, and at what time was it?

*A.* I remember ſeeing her; the ſun was going down, but I do not ſay that it was ſet.

*Q.* Where was you at that time?

*A.* I was on the quarter-deck, and ſtepped into the Captain's cabin, to attend to the meſſage, ſuppoſing ſhe had one to deliver.

*Q.* Did you hear any, and what meſſage from the Fox?

*A.* The Captain of the Fox ſaid, that it was the Admiral's deſire that the ſhips of your diviſion ſhould bear down into his wake; the word was *deſire* and not order.

*Q.* Did you hear any other words?

*A.* No, only the ſame repeated over again to make them more diſtinct.

*Q.* Did

*Q.* Did you hear any, and what anſwer returned by me?

*A.* You replied, "Very well, Sir, I have repeated the ſignals for that purpoſe."

*Q.* Where was I ſtanding at that time?

*A.* In the Captain's ſtern-gallery; the upper-ſtern gallery.

*Q.* Did you go from the Captain's cabin to the quarter-deck to endeavour to hear if any thing more was ſaid, as the Fox ſhot under our lee; and did you hear any thing more except the cheering?

*A.* I obſerved them preparing to cheer from the Fox's fore-caſtle as ſhe turned round our larboard quarter, and ſaw the people upon the Fox's fore-caſtle pointing at our rigging with ſeeming ſurprize, but heard no more of the meſſage; I ſtepped immediately back to the foot of the poop-ladder, and ſaw them cheer; our people did not immediately return it, being buſily employed; and many of *them took no notice* of the frigate till ſhe had cheered, but then prepared to return it.

EXAMINED *by the* COURT.

*Sir Chal. Ogle.* Did you hear the Vice-Admiral return any other anſwer or meſſage more than you have already related?

*A.* No: I heard no other meſſage than "It was very well, and I have repeated the ſignals."—I recollect that it ſtruck me that ſeveral of the ſhips had bore down before the meſſage was delivered, as I took notice of it from the quarter-deck.

*Capt. Peyton.* When it was repeated from the Fox, was it by the ſame perſon, or any other voice?

*A.* It was repeated; but I cannot ſay whether by the ſame, or any other perſon.

*Capt. Bayne.* What ſpace of time was there between the delivery of the meſſage, and the cheering?

*A.* The cheering from the Fox was immediately after the delivery of the meſſage, before it was well concluded.

*Capt. Duncan.* Was it before the Vice-Admiral anſwered that they cheered?

*A.* No: it was after.

*Capt. Peyton.* Was there more than one cheering?

*A.* There was; three cheers are uſual from one ſhip to another.

*Adm. Digby.* Did you hear any cheering before the meſſage was delivered?

*A.* No: the cheering I heard was prior to the Fox's turning round our larboard quarter.

*Q.* Was there any body in the ſtern gallery with the Vice-Admiral.

*A.* Yes: there was ſome one, but I will not pretend to ſay who; I never aſked.

*Capt. Duncan.* You ſaid ſome of the ſhips were bearing down before the Fox came to you, did theſe ſhips remain in the Formidable's wake, or the Admiral's?

*A.* Some of them appeared to be in the Admiral's wake, the Ocean particularly.

*Q.* As you mentioned the Ocean, did ſhe go a great deal from the wind?

*A.* As I am no ſeaman, I cannot anſwer that.

*Q.* Was her ſtern to you?

*A.* I cannot ſay.

*Q.* What was your duty during the day of the action.

*A.* At the time of action, I was ſtationed in the gun-room at the trumpet from the wheel, to deliver orders from the quarter-deck to the lower deck, but had no particular duty to perform after the action ceaſed.

*Withdrew.*

*Sir H. Palliſer.* Mr. Preſident, I had ſummoned Captain Sir John Hamilton, of the Hector, and Captain Keith Stewart, of the Berwick; but I do not think it neceſſary to call them, as what I wanted to prove is ſufficiently done by the captain and maſter of the Queen; my trial has already taken up more of your time than I could wiſh, and therefore it becomes neceſſary

neceſſary for me to abridge the matter that remains as much as poſſible.

Here the Court was cleared; but the audience being ſoon after re-admitted, the Preſident informed the Priſoner, that they thought it proper to call the Captains Sir John Hamilton and Stewart, and Lieutenant Winckworth, and the two men mentioned by Sir Charles Douglas, who he ſaid were ſent for accordingly *. In the mean time Sir Hugh Palliſer deſired the letters and papers of Admiral Keppel to the Secretary of the Admiralty, of the following dates, to be read, viz. that dated "Victory at ſea, five in the afternoon, 24th of July;"—that dated "30th of July, giving an account of the action, with the Admiral's return of killed and wounded incloſed therein; next the narrative part of the Admiral's journal that accompanied the account, from the 24th to the 28th of July incluſive; and laſt of all, the Admiral's letter of the 20th of Auguſt to Mr. Stephens;"—all which were read. After this, Sir Hugh Palliſer deſired permiſſion of the Court to read the remaining part of his defence; the requeſt was complied with; but the Preſident informing him, that he thought it would be a more proper time after the Court had examined the freſh evidence they had called in; Sir Hugh acquieſced.

ROBERT SPENCE, *Cockſwain of the* DUKE, *late of the* STIRLING CASTLE, *called in and ſworn.*

*Q.* Was you on board the Stirling Caſtle at the time of the action of the 27th of July?

*A.* Yes, I was.

* Mr. Madgſhon, maſter of the Victory, came into Court, and wanted ſome alteration to be made in the minutes, reſpecting his having ſaid, "That the Victory lay to from one to five o'clock in the afternoon." The Judge Advocate ſaid, that his evidence was taken down correctly and literally as he had delivered it, and therefore he ſuppoſed he had taken up his preſent idea from the newſpaper accounts, for which the Court was not reſponſible. All the members agreed, that he could have no retroſpect to his former evidence, and therefore he withdrew.

Q. Was you upon deck at daylight of the 28th of July.

*A.* I was, juſt before break of day.

Q. What ſhip was neareſt to you at that time ?

*A.* The Berwick, I think; we was rather on her ſtarboard quarter.

Q. Did you ſee any ſhip a-breaſt of you ?

*A.* I ſaw a ſhip to windward of us.

Q. Give an account of what you know of that ſhip?

*A.* I took her to be a three-deck ſhip at that time.

Q. What diſtance was you from her, as near as you can gueſs ?

*A.* She was not ſo near as to be within hail; but it was ſo dark in the morning that I cannot juſtly ſay how near ſhe might be.

*C. Duncan.* Have you been bred always to the ſea?

*A.* Yes, I have.

Q. What obſervation did you make of that ſhip ?

*A.* I ſaw her coming firſt upon our ſtarboard quarter; I ſaw the lights going backwards and forwards through the ports; after that I ſaw the enſign flying, which I could not ſee before.

Q. What elſe did you ſee flying ?

*A.* I ſaw the flag.

Q. Where did you ſee the flag ?

*A.* At the fore-top-maſt-head,

Q. What colour was it ?

*A.* I cannot ſpeak to the colour.

Q. Did you ſee the colour of the enſign ?

*A.* I do not recollect; I took no notice of her after ſhe had paſſed us.

Q. Was it light enough to diſtinguiſh colours ?

*A.* No.

Q. Did you know that ſhip to be the Formidable ?

*A.* No.

Q. Did you ſee any diſtinguiſhing lights in her ſtern or top as ſhe paſſed?

*A.* No, I can't ſay I did.

Q. Did

Q. Did you ſee the ſame ſhip after daylight?

*A.* No, I did not, I took no notice of her.

*Withdrew.*

GEORGE AYTON, *Captain's Clerk of the* STIRLING CASTLE, *called in and ſworn.*

Q. Was you upon deck at daylight, on the 28th of July?

*A.* Yes, and before daybreak.

Q. What ſhip was neareſt to you at that time?

*A.* I underſtood the Berwick.

Q. At what diſtance?

*A.* I can't ſpeak to diſtance, but I had a private reaſon for inquiring if it was the Berwick, having a friend on board her.

Q. Was ſhe five miles, five cables length, or one off?

*A.* She was within ſight, perhaps half a mile or leſs, it was the darkeſt part of the night.

Q. Was there any three-deck ſhips in ſight juſt before daybreak to windward of you?

*A.* I ſaw a ſhip to windward of us before daybreak; I could not determine at that time whether ſhe was a two or three-deck ſhip on firſt ſeeing her.

Q. Did you afterwards determine?

*A.* Yes.

Q. What ſhip was it?

*A.* I underſtood that ſhe was the Formidable.

Q. How do you know that ſhe was the Formidable?

*A.* Only by ſeeing the flag at the fore-top-maſt-head: ſhe engaged the attention of every one on the quarter-deck; I ſaw it was a blue flag at daylight. When ſhe was a-breaſt of the Stirling Caſtle I could not diſtinguiſh the colour, but I did afterwards. After that, I went to leeward to look at the French fleet, being anxious to ſee them one of the firſt.

Q. Was the weather ſuch that you might be deceived?

*A.* It was cloudy, but not ſo as to lead me to ſuppoſe that I could be deceived.

Q. Was

Q. Was there light enough that you could diſtinguiſh the Berwick?

*A.* After getting ſight of this ſhip in queſtion, I never thought of the Berwick after.

Q. As the Day opened more, did you pay any attention to the ſhip in view with the blue flag?

*A.* After having ſight of the French fleet, I recollect its being mentioned that the ſhip in queſtion had ſhewn her enſign.

Q. Did you ſee the enſign or not?

*A.* Yes; after ſeeing the blue flag at the main-top-maſt-head.

*Capt. Robinſon.* At the main-top-maſt-head?

*A.* No! no! I believe it was the fore-top-maſt-head.

*Capt. Duncan.* I am ſure you have confounded the man.

*Adm. Digby.* I am ſure the man has confounded us.

*Capt. Duncan.* Did you ſee the enſign; ſay yes, or no.

*A.* I cannot pretend to ſay that I am ſo certain of ſeeing the blue flag at the fore-top-maſt-head. I ſaw ſeveral ſhips with blue enſigns, but I am not certain whether any of thoſe ſhips was the ſhip I had before ſeen or not.

Q. When that ſhip was upon your ſtarboard quarter, did you ſee the lights of the Queen, or at what time did you ſee them?

*A.* I do not recollect at what time.

Q. Are you ſure that the ſhip you ſaw had a fore-top-gallant-maſt?

*A.* I preſume ſhe had, and believe ſo, from the recollection of the flag.

Q. Did you ſee the Queen with a red flag at her fore-top-maſt-head (as it was ſo light that you could diſtinguiſh colours) at the ſame time that you ſaw the blue flag at the Formidable's fore-top-maſt-head, as you ſuppoſe?

*A.* I do not recollect.

Q. Did

Q. Did you obſerve whether this ſhip had two ſtern galleries or not?

*A.* No, my obſervations were not ſo minute.

Q. Did you take notice of any diſtinguiſhing lights on board her, poop-light or top-light?

*A.* No, I did not obſerve any.

Q. If you did not obſerve the two ſtern galleries, how did you diſcover that ſhe was a three-deck ſhip?

*A.* As ſhe was ſo near I thought I could determine her to be a three-deck ſhip by her height.

Q. Where was you quartered?

*A.* During the action I was quartered in the cabin and ſtern gallery, to obſerve ſignals.

Q. Did you obſerve any other ſhip paſs you to windward beſides this ſhip you ſuppoſed to be a three-deck ſhip?

*A.* No, I have no recollection of any.

Q. Did you look at that ſhip with a glaſs?

*A.* No, I did not.

*Hon.* KEITH STEWART, *Captain of the* BERWICK, *called in and ſworn.*

*Preſident.* What time was it when the Red diviſion formed in the rear of the Admiral on the afternoon of the 27th of July?

*A.* I do not know.

Q. At what time did they leave the rear to take their ſtation in the van?

*A.* As the Berwick was not at that time with Sir Robert Harland, I cannot poſitively ſay.

Q. Where was the Berwick at that time?

*A.* As ſhe never paſſed the Victory on the larboard tack to the northward,—at that time the ſignal was made for forming the line upon the ſtarboard tack, the Berwick was then paſſed a-head, and took her ſtation a-head of the Victory.

Q. At what time did the Vice-Admiral of the Red join you and take his ſtation in the van a-head of the Victory?

*A.* I cannot poſitively ſay.

Q. Did

Q. Did you at any time in the afternoon ſee the Formidable?

*A.* Not that I recollect.

*Sir Chal. Ogle.* What was the ſituation of the Berwick on the morning of the 28th about daybreak?

*A.* In my ſtation in the line of battle, a-ſtern of the Cumberland, and a-head of the Stirling Caſtle.

Q. Did you ſee the Formidable at that time, and if you did, what was her ſituation?

*A.* No, at daylight I did not ſee her; in the middle watch I ſaw her on our ſtarboard quarter or thereabouts.

Q. Did you ſee her ſoon after daylight came on?

*A.* Not to pay any attention to her.

Q. What time in the middle watch?

*A.* I ſhould think about two, I cannot be very certain.

Q. Was there any ſhip upon your weather-quarter at daylight?

*A.* Whether the Stirling Caſtle was right a-ſtern, or upon our weather-quarter, I can't ſay, but ſhe was there, or thereabouts.

Q. At the time you ſaw the Formidable in the middle watch, did you ſee the Queen alſo?

*A.* Not only then, but all night long I ſaw her.

*Ad. Digby.* At what diſtance was the Formidable from the Berwick?

*A.* I cannot poſitively ſay, but I could diſcern a flag at her fore-top-maſt-head, but I could not diſtinguiſh the colour.

Q. Had you any other reaſon to ſuppoſe it was the Formidable beſides ſeeing the flag?

*A.* None.

Q. Did you ſee any other ſhips in the ſame direction with that ſhip you ſaw with a flag?

*A.* I have a confuſed idea about it, but not ſo good as to ſpeak as an evidence upon it.

Q. Could you ſee any lights of the Victory's at that time?

*A.* Very frequently, at the bowſprit end, but not conſtantly, owing to the ſhips between the Victory

and

and us, which I apprehend intercepted the ſight of them.

*Sir H. Palliſer.* Did you continue upon deck till daylight?

*A.* I do not apprehend I was ever ten minutes, I am ſure not half an hour, off the deck together all night.

*Q.* Did you at any other time take notice of the ſhip that you ſpoke of before daylight, and make the ſame obſervation?

*A.* I do not remember to have ſeen her more than once; how long I ſaw her I cannot ſay.

*Q.* Is there not a poſſibility of your being deceived at that time of night with reſpect to ſeeing a flag at the diſtance ſhe was from you, and the kind of weather it then was?

*A.* I thought myſelf quite certain that I ſaw a flag at the fore-top-maſt-head, and ſeeing Sir Robert Harland's lights a-head, I concluded and do conclude that it was the Formidable.

*Q.* Did that ſhip go a-head of the Berwick in the night?

*A.* Whether ſhe went a-head or a-ſtern I did not obſerve.

*Q.* Did you obſerve, at daylight, the Robuſte or any other ſhip of the Blue diviſion a-head or a-ſtern of the Berwick, or in any other ſituation?

*A.* No, I did not.

*Sir* JOHN HAMILTON, *Captain of the* HECTOR, *called in and ſworn.*

*Preſident.* Was you one of the ſhips of the Red diviſion which took her place in the rear of the Admiral on the afternoon of the 27th?

*A.* I was.

*Q.* At what time did you form in your ſtation?

*A.* Between three or four o'clock to the beſt of my recollection.

*Q.* What time did you quit that ſtation in the rear to take your ſtation in the van?

*A.* Between five and ſix.

*Q.* You

*Q.* You then paſſed between the Victory and the Formidable, how did they bear, and what diſtance were they in reſpect to the Hector?

*A.* I took no notice either of the bearings or diſtance.

*Q.* What general ſignals were flying at that time on board the Victory and Formidable?

*A.* The ſignal for the line was flying on board the Victory, and the ſignal for ſhips bearing down; they might be on board the Formidable, but I did not look.

*Q.* At what time did the Hector get into her ſtation in the van that afternoon?

*A.* At or about ſix o'clock.

*Q.* Was the whole of the Red diviſion in their ſtations at that time?

*A.* I cannot ſay to the whole, moſt of them were.

*Capt. Kempenfelt.* Juſt before the Red diviſion moved from the rear to the van, did you take notice how the Formidable bore with reſpect to the Hector?

*A.* She was wide upon the weather-quarter.

*Capt. Robinſon.* Was you only half an hour in going from your ſtation in the rear, to your ſtation in the van?

*A.* It muſt be more than that; it is impoſſible I could ſpeak certain as to time.

*Preſident.* Did you, at any time, obſerve any general ſignals made on board the Formidable after the action?

*A.* I can't be poſitive; I think I ſaw the ſignal for bearing down; but the ſhips between the Hector and the Formidable often prevented my ſeeing her.

*Q.* Was you upon deck at daybreak, or before, on the morning of the 28th?

*A.* I was up all night, and upon deck at daybreak.

*Q.* Did you ſee the Formidable at daybreak, and whereabouts might ſhe be at that time?

*A.* I did not ſee her, to my knowledge.

LIEUT. WINCKWORTH, *late of the Formidable, called in and ſworn.*

*Preſident.* Had you any converſation with Lieutenant

nant Hills relative to a ſignal-book on the 27th of July?

*A.* I had

*Q.* At what time, and what was the converſation?

*A.* I can't ſwear to time; I obſerved Mr. Hoggart hoiſt two flags at the mizen-peak, upon which I aſked Lieutenant Hills what that ſignal meant? he ſaid he did not know; but if I would ſend for the ſignal book, he would look: I ſent for the ſignal book, and found it to be the ſignal for the line of battle a-head.

*Q.* What were the two flags that were hoiſted at that time?

*A.* The union flag, and a blue flag with a red croſs under it.

*Q.* How long were they kept flying?

*A.* I obſerved them flying moſt part of the evening; all the evening, I believe.

*Q.* Can't you at all recollect whether it was late, or early in the evening, or any circumſtance that may fix the time it was hoiſted?

*A.* I can't ſpeak to time; it was ſoon after the Victory had paſſed us to leeward on the ſtarboard tack.

*Q.* On what part of the ſhip was you, when you aſked Mr. Hills about the ſignals?

*A.* On the fore-caſtle.

*Q.* What ſail had the Formidable ſet at that time?

*A.* Main-top-ſail, the mizen-top-ſail on the cap, and the fore-ſail ſet, to the beſt of my knowledge.

*Q.* Was there any gun fired when the ſignal was made, to your knowledge?

*A.* Yes; it was that which made me look about, to ſee what the ſignal was that was hoiſted.

*Q.* Was there one gun, or more, fired?

*A.* I do not recollect; one I am certain of.

*Q.* Was the mizen ſet, to the beſt of your recollection?

*A.* I believe it was; I cannot ſpeak poſitively thereto.

*Q.* Do you recollect when the main-ſail was ſet?

*A.* I cannot ſpeak to the time.

*Q.* Do you remember its being ſet? *A.* I do.

[*Here the whole evidence was cloſed on both ſides.*]

SIR

SIR HUGH PALLISER.

*Mr. Preſident, and Gentlemen of the Court,*

The examination of my witneſſes being now concluded, I entreat that the Court will permit me to add, to the defence I have already offered, ſome conſiderations which either have not been ſubmitted to your attention, or have not yet been inforced ſo fully as their importance may require. I feel how much I have already exerciſed the patience of the Court; and therefore I am extremely averſe to intruding any further matter upon them. But I have ſo much at ſtake on the iſſue of this trial, and the activity of my enemies has been ſo conſpicuouſly exerted to fix blame upon me, even where I deemed my innocence invulnerable, that ſhould I, from a dangerous exceſs of confidence, paſs over any points, however immaterial they may ſometimes have appeared to me, which my enemies have eſſayed to ſtrain into importance, my ſilence might be miſunderſtood, and a conviction of the obviouſneſs of the ſubject might be ſuſpected to proceed from a dread of inveſtigation.

Many queſtions have been aſked about the practicability of my ſhifting my flag, and it is to the honour of the Court, that they have been ſo aſſiduous in examining to a point on which my enemies have ſo often laboured to ground a cenſure of me. In my laſt addreſs to the Court I only ſpoke generally to this head, but I will now open my mind upon it with particularity.

The imputation for not ſhifting my flag refers to the twenty-fifth article of the *fighting* inſtructions, the words of which are, that "If any flag-ſhip be "diſabled, the flag *may* go on board any ſhip of his own "ſquadron or diviſion."

By this inſtruction it is clearly optional in the flag-officer to ſhift his flag or not, according to circumſtances; and in my ſituation the afternoon and evening of the day of action, ſo foreign and inapplicable

did

did the inſtruction appear to me, that I own nothing could be more diſtant from my thoughts at the time than the idea of ſhifting my flag, for which I ſubmit to the Court's better judgment the following reaſons:

The battle was over, and the ſignal for battle hauled down; the immediate renewal of the action by the Admiral, when I had wore cloſe to the enemy, having been declined for prudential reaſons, the propriety of which I have no right here to call in queſtion, we were not purſuing an enemy, nor ſteering towards one. But the Admiral, as he deſcribes his own motions in reſpect to the French, had *wore and laid his ſtern to them.* On firſt deſcribing this manœuvre, which the Admiral ſtated to have been for collecting the ſhips, he ſtiled it *an appearance to run away.* But recollecting himſelf, he afterwards, on the Judge Advocate's reading thoſe words, well obſerved, that it was better to omit them in the minutes, and his wiſhes were complied with.

The enemy was not coming to attack us, but was forming to leeward of our fleet. I knew that my ſhip would be refitted and ready for action by daylight the next morning, and every motion of the Admiral indicated to me that he did not intend to re-attack before the morning. My reaſons for this opinion were many, and are already before the Court. They are, the Red diviſion's leaving the rear between five and ſix o'clock; the uncollected and unrefitted ſtate of my diviſion at that time, and during the reſt of the afternoon till night; the incomplete forming of the centre diviſion; the diſtance of the French fleet from us; the late hour of the Red diviſion's getting into its ſtation a-head, and the Admiral's never ſhortening ſail till eight o'clock in the evening to give the Formidable and Vengeance, and other crippled ſhips, the opportunity of collecting and running the length of their ſtations in the line. Theſe circumſtances, it ſhould alſo be recollected, receive the ſtrongeſt confirmation from the Admiral's public letter and the Victory's log-book; beſides, to the ſhifting of my flag many things would

have been eſſential: I muſt have ſhortened ſail and laid to, which would have thrown me at a much greater diſtance from my ſtation; we muſt have new reefed all the tackle fully, and repaired all the geer neceſſary for hoiſting our boats, which would have retarded the work going on for ſetting more ſail: the ſhip to which I ſhould have ſhifted my flag muſt alſo have laid to, and this would have kept her more a-ſtern and out of her ſtation. The moving from one ſhip to another with my ſignal colours, neceſſaries and attendants, is an operation which would have required, as I conceive, ſome conſiderable time.

All this being conſidered, ſhifting my flag might have produced great inconveniencies, by increaſing the Formidable's diſtance from her ſtation, and alſo keeping another ſhip out of it; but I know of no good purpoſe which could have been anſwered, nor do I conceive that our naval hiſtory will furniſh an inſtance of a flag-officer's ſhifting his flag under ſuch circumſtances.

As to the ſignal for the line being out, it is far from neceſſarily proving an intention of immediate renewal of the action: the inference in this reſpect from a line depends on circumſtances; if the Admiral had been ſtanding with his fleet towards the enemy, I agree that the indication would have been ſtrong indeed, and as in that caſe I certainly ſhould have concluded that his object was to haſten on an engagement before night, and without doubt I ſhould have been forward to inſure my having a proper ſ.are of the glory of a ſecond action, either by endeavouring to bear down to engage the firſt ſhip of the enemy I could have fetched, or by ſhifting my flag; of which meaſures I ſhould have preferred the one which would have been likely to bring me into action ſooneſt and moſt effectually; this aſſertion I expect the more credit to becauſe it is in proof that early in the afternoon of the day of action, though my ſhip came laſt out of the engagement, and was the moſt damaged, yet I wore ſo inſtantly and ſo cloſely to the enemy, that my

ſhip

ſhip was nearer to the French fleet to renew the fight than the Victory, or any other ſhip of our fleet. But the Admiral was not ſtanding towards the enemy; he had put his ſtern to them, and there were all the other indications I have already deſcribed to ſhew that the line was forming, not for immediate renewal of the fight, but to collect all the ſhips for action early the next morning; and here I beg leave to take notice of a circumſtance which corroborated my idea of the Admiral's intention: at the late trial I propoſed it as a queſtion to a witneſs, whether from the motions of the Admiral, and his public letter, the witneſs did not infer that there was no intention to re-engage till next day? the Admiral ſtrenuouſly reſiſted putting ſuch a queſtion and the Court over-ruled it. This circumſtance will be found in page 33 of the trial printed by authority. But I do aſk, whether any thing could more evince the Admiral's conſciouſneſs of the ſenſe conveyed by his own words, than ſuch a dread to hear the conſtruction of them.

In the courſe of the trial it has been aſked, whether I made any ſignal of diſtreſs? the 22d article of the fighting inſtructions explains what this ſignal is; and then the 23d article points out how other ſhips are to act when ſuch a ſignal is made by flag-ſhips, and it is thus expreſſed:—"If the Admiral, or any "flag-ſhip, ſhould be in diſtreſs, and make the uſual "ſignal, the ſhips of the fleet are to endeavour to get "as cloſe up into a line *between him and the enemy* as "they can, having always an eye to defend him, if "the enemy ſhould come to annoy him in that condi-"tion." But taking theſe two articles together, I ſubmit to the Court, that they are only applicable to flag and other ſhips which meet with ſome material diſaſter during battle, and when hard preſſed by the enemy; as it is plain from the terms, which ſuppoſe either an enemy to be actually attacking, or to be at leaſt advancing for the purpoſe. The ſituation of the Formidable was not of this kind; for though ſhe was

ſo much a-ſtern, and to windward of her ſtation, ſhe was far from being within the meaning of the ſignal, the enemy not making the leaſt attempt to annoy her, after ſhe had joined the Victory, but on the contrary being more to leeward of the Formidable than the body of our own fleet.

In reſpect to ſending a frigate to the Admiral to inform him of our not being able to keep up with him, I had no frigate to ſend till about eight o'clock, as muſt appear to the Court from the evidence of Sir William Burnaby, which ſhews that early in the afternoon, the Milford, being the frigate belonging to my diviſion, was called to the Victory by ſignal and was employed by the Admiral; but if ſhe had not been ſo employed, I know not for what purpoſe I ſhould have ſent her to the Admiral, for I concluded that the condition of the Formidable was ſo apparent as to make a meſſage unneceſſary, eſpecially as he omitted to throw out my ſhip's pendant with the pendants of the ſhips of my diviſion.

I ſhall now take a ſhort notice of ſome few other things as they ſeverally occur to me.

I had brought to the remembrance of the Court many ſtriking acts of approbation of my conduct by the Admiral, for the ſake of contraſting them with the criminating tendency of his evidence to this Court. There wanted nothing more to expoſe ſuch inconſiſtency, nor did I look for more, but chance has thrown other matter in my way. Sir William Burnaby's account of the Admiral's ſending his compliments to me, and of the converſation about me *the day after the engagement*, is a new proof how well ſatisfied he was with my conduct at that time. If he had thought me diſobedient, would he have been ſo eager in ſending his compliments to me, or ſo ready to exclaim, with a ſort of feeling for me, that I had received more damage than any of the fleet.

It gave me ſingular ſatisfaction to ſee how clearly the proofs of my having my diſtinguiſhing lights burning

burning in the night after the action came out at last. The two men, who had the care of the lights, ſwore with ſo much particularity, and ſo convincingly, that all doubts apparently vaniſhed in the minds of thoſe who heard their evidence. My obligation to the honeſt ſimplicity of theſe men is very great; becauſe by confirming the leſs poſitive teſtimony of other witneſſes, it takes from my enemies a topic of abuſe, which was ſo long ſlighted by me, and ſo induſtriouſly circulated to miſlead the public opinion concerning me, that it had at length grown into a ſerious accuſation.

I am alſo glad that it has been in my power to produce poſitive teſtimony of the repetition of the ſignals, the ſignal particularly for the line, whilſt I was within my ſtation.——Very impartial perſons have, I believe, entertained doubt on this head; but I flatter myſelf it is now entirely removed. I was myſelf quite certain that the ſignals were repeated, becauſe I was particularly obſervant of ſignals the whole day; and if I thought the fact was ſtill doubted, I ſhould be induced to call a witneſs, who could ſpeak very poſitively to the point of ſignals, but ſtands in ſuch a relation to me, and has been ſo conſtantly attendant on me in Court, that I am not willing to call him, unleſs there is an abſolute neceſſity.

The dangerous ſtate of the fore-maſt of the Formidable, which was the great impediment to our carrying ſufficient ſail to keep up with the Admiral, is a point of great importance to the clearing my character from the imputation of not uſing my utmoſt endeavours to preſerve my ſtation. I was therefore very anxious to give the Court the fulleſt explanation on this head; and though the Carpenter ſpoke confuſedly in reſpect to the time when he firſt knew of the rottenneſs of the maſt, yet my Captain, and the Lieutenants who attended the fore-caſtle, have given ſuch ample teſtimony of our having known of the rottenneſs of the maſt at the time, that I truſt the fact cannot be doubted by any unprejudiced perſon. I well

well remember being informed of the condition of the maſt, and the anxiety I was under from the conſequential delay in bending our fore-top-ſail.

On the trial of Admiral Keppel, much animadverſion was made on log-books; but, in the courſe of the preſent, it has appeared, how very little dependance is to be had on entries in them of tranſactions in the time of actual engagement, or during the buſy moments of preparing for further action. If I was diſpoſed to retaliate on thoſe who have hitherto made ſuch ill-natured remarks on the log-books of particular ſhips, the logs of Admiral Keppel's and Sir Robert Harland's ſhips, and the examinations of their ſeveral maſters, furniſh ample ſcope for the ſeverity of animadverſion. But it is not requiſite for my defence to ſay more, than that I truſt the Court will not allow my innocence to be affected by ſuch uncertain and contradictory records.

In the courſe of Admiral Keppel's evidence, he took care to diſclaim being an accuſer, and to thank God that he was not ſo. But did the tenor of his evidence correſpond with this declaration? Was not his evidence criminating in almoſt every part? Have not he, and his friends, all joined in the accuſation of me?—Have they not ſealed their accuſation with their teſtimony upon oath?—Shall the open accuſation of others, however growing out of ſelf-defence, never be forgiven, and a ſecret accuſation, vainly attempted to be ſuſtained by the accuſer's oath, eſcape all cenſure?—It is not fit that I ſhould purſue the compariſon further. Let the hearts of thoſe who hear me feel the reſt.

It is now time to leave the Court to their own judgment of the caſe before them. If I have omitted any thing material, their wiſdom and humanity will ſupply it. If I am miſtaken in any of my facts, or in my reaſoning upon them, their candour will correct my error, without haſtily imputing to me an intentional miſrepreſentation.

*Mr.*

*Mr. Preſident, and Gentlemen of the Court.*

To conclude; I flatter myſelf, that, as at firſt, Admiral Keppel's commendation of me procured me the approbation of my SOVEREIGN, ſo your honourable acquittal of me now, will diſſipate the cloud of prejudice, and reſtore me to the good opinion of my COUNTRY!

WEDNESDAY, MAY 5.

At nine o'clock this morning the Court-Martial aſſembled, when the doors being ſhut, they continued in debate till after twelve o'clock; the doors being thrown open and ſtrangers admitted, (the Priſoner appearing at the bar) the Preſident deſired the Judge Advocate to read the ſentence of the Court, which was as follows:

"That the Court having taken the whole of the "evidence into conſideration, both on the part of the "proſecution, as well as in favour of the Priſoner, "were of opinion, ſo far from the conduct of Sir Hugh "Palliſer, Vice-Admiral of the Blue, being reprehen-"ſible on the 27th and 28th of July, that in many "parts thereof it appeared EXEMPLARY and HIGH-"LY MERITORIOUS; but it did appear to them that "he ſhould have taken ſome ſteps, either by the Fox "frigate, or otherwiſe, to make the diſabled ſtate of "his ſhip known to the Admiral. However, all cir-"cumſtances being duly weighed, they acquit him "of the charges adduced againſt him, and he is here-"by acquitted accordingly."

As ſoon as the above ſentence of honourable acquittal was pronounced, the whole audience joined in three ſhouts of acclamation, which were inſtantly returned by three cheers from the Formidable's and other barges along ſide the Sandwich, the crews of which immediately put blue ribbons in their caps, bearing this inſcription, PALLISER *and* INNOCENCE *protected.*

*protected.*—As ſoon as the firſt tumult of general joy ſubſided in the Court, the Preſident receiving Sir Hugh Palliſer's ſword from the Marſhal, preſented it to the Vice-Admiral, addreſſing him in the following words:

"*Sir Hugh Palliſer*,
"I feel the higheſt ſatisfaction in being authorized "by this Court to return your ſword, which you "have hitherto worn with ſo much profeſſional repu-"tation, and which, I truſt, will ſoon be drawn "again in the honourable defence of your country."

THE END.